1-3-SEN-CR

8 March 1988
OCA88-0673

MEMORANDUM FOR: Director, Office of Security
ADGC/AL&MS/OGC

STAT FROM: [redacted] Legislation Division
Office of Congressional Affairs

SUBJECT: Senate Passage of Polygraph Legislation

1. On 3 March 1988, the Senate passed S. 1906, the "Employee Polygraph Protection Act of 1987" by a vote of 69-27. This vote, together with a vote of 254 to 158 for House passage, means the bill has more than the two-thirds margin needed to make it veto-proof.

2. Attached for your information is a copy of the floor debate and the text of the bill as finally passed.

3. Staff has indicated that any concerns not already addressed by the Agency's exemptions can be addressed in the conference report.

STAT [redacted]

Attachment

STAT OCA/LEG [redacted] (4 March 1988)

Distribution:
Original - Addressees (w/att)
1 - D/OCA (w/o att)
STAT 1 - [redacted] (Liaison) (w/o att)
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1 - PS Signer (w/o att)
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The PRESIDING OFFICER. The majority leader.

Mr. BYRD. Mr. President, I have been discussing with the distinguished acting Republican leader our going to the polygraph bill, Calendar Order No. 528, S. 1904. I understand from the distinguished acting Republican leader that there would be an objection. I shall move, and I also understand from the distinguished acting Republican leader, and Mr. HELMS, that there will be a request for the yeas and nays on the motion.

Mr. President, I would suggest that Senators be informed by our respective Cloakrooms that the vote will occur shortly. I will put in a brief quorum so the Cloakrooms may get out that message. Before I make the motion I would be happy to yield to the distinguished acting Republican leader for anything that he might wish to say at this point.

Mr. SIMPSON. Mr. President, indeed the majority leader has been very cooperative in sharing with those of us on this side of the aisle what his intention is today and even into the week. Because of the adjournment yesterday we are in the position of morning business where we are to receive a nondebatable motion to proceed to S. 1904, it is perfectly appropriate in every way, and we have those who have objected to any type of ordinary procedure to get to that, and under the rules here. I do appreciate the opportunity to vote on the motion to proceed. That will be expected within a very few minutes.

I assume, then, that I might pass on to those on this side of the aisle and to all of the Senators that additional votes could occur indeed during the remainder of the session today. I doubt seriously that this matter is going to be resolved today. I do not know in the totality of things that we will find out soon.

But we are here to make progress on that. Then if disposed of in timely fashion, we will go on to either the Price-Anderson legislation or the intelligence oversight legislation as the majority leader would direct. Is that the general understanding? I inquire of the majority leader.

Mr. BYRD. Mr. President, yes. It is the understanding. I hope that during this week the Senate would be able to proceed to the congressional oversight legislation, Calendar Order No. 521, S. 1721 that came out of the Select Committee on Intelligence, and also the Price-Anderson legislation. It would be my present inclination to try to take up the House bill, not necessarily in that order.

But those are the two other pieces of legislation that I hope we could deal with this week and it could be one or the other, and then the other before the one. But I hope that the Senate will not be unduly delayed in completing action on the polygraph bill. But in answer to the distinguished acting Republican leader those two bills to which he has referred are the two measures that I would hope the Senate could complete action on this week or at least take some action on one or both this week before we got out. I do anticipate the Senate being in a full week through Friday with votes.

Mr. SIMPSON. Mr. President, I thank the distinguished majority leader. Indeed, it is helpful to have this agenda because, as we do the ritual known as holds, those are not for purposes of total obstruction. They are essentially for the purpose of notifying the Members that they need to be prepared for this debate and get involved and ready themselves, and that is, therefore, very helpful, I think, on both sides of the aisle as we look at that kind of an agenda. I thank the majority leader.

Mr. BYRD. Yes. In many instances, those holds are for that purpose, as the assistant Republican leader has said, of informing Senators that the measure is about to be called up. They may have amendments they wish to debate, and so on.

POLYGRAPH PROTECTION ACT OF 1987

Mr. BYRD. Mr. President, I now move that the Senate proceed to consideration of Calendar Order No. 528, S. 1904.

The PRESIDING OFFICER. The question is on agreeing to the motion to proceed.

Mr. BYRD. Mr. President, I believe the Senator from North Carolina wishes to ask for the yeas and nays.

Mr. HELMS. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. BYRD. Mr. President, this is not a debatable motion. I ask unanimous consent to proceed for 15 seconds.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, this motion is not debatable. I had said I would suggest the absence of a quorum.

I ask unanimous consent that the call for the regular order be automatic at the end of 15 minutes.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. BYRD. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The question is on agreeing to the motion to proceed to the consideration of S. 1904, Calendar Order No. 528, a bill to strictly limit the use of lie detector examinations by employers involved in or affecting interstate commerce.

The yeas and nays have been ordered.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Tennessee [Mr. GORE], the Senator from Hawaii [Mr. MATSUNAGA], and the Senator from Illinois [Mr. SIMON] are necessarily absent.

I also announce that the Senator from Delaware [Mr. BIDEN] is absent because of illness.

Mr. SIMPSON. I announce that the Senator from Kansas [Mr. DOLE], the Senator from Oregon [Mr. PACKWOOD], and the Senator from New Hampshire [Mr. RUDMAN] are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 74, nays 19, as follows:

[Rollcall Vote No. 33 Leg.]

YEAS—74

Adams	Evans	Melcher
Armstrong	Exon	Metzenbaum
Baucus	Ford	Mikulski
Bentsen	Fowler	Mitchell
Bingaman	Glenn	Moynihan
Boren	Graham	Nunn
Boschwitz	Grassley	Pell
Bradley	Harkin	Proxmire
Breaux	Hatch	Pryor
Bumpers	Hatfield	Reid
Burdick	Heflin	Riegle
Byrd	Heinz	Rockefeller
Chafee	Hollings	Roth
Chiles	Humphrey	Sanford
Cohen	Inouye	Sarbanes
Conrad	Johnston	Sasser
Cranston	Kassebaum	Shelby
D'Amato	Kasten	Simpson
Danforth	Kennedy	Specter
Daschle	Kerry	Stafford
DeConcini	Lautenberg	Stennis
Dixon	Leahy	Weicker
Dodd	Levin	Wilson
Domenici	Lugar	Wirth
Durenberger	McCain	

NAYS—19

Bond	McClure	Symms
Cochran	McConnell	Thurmond
Garn	Murkowski	Trible
Gramm	Nickles	Wallop
Hecht	Pressler	Warner
Helms	Quayle	
Karnes	Stevens	

NOT VOTING—7

Biden	Matsunaga	Simon
Dole	Packwood	
Gore	Rudman	

So the motion was agreed to.

The PRESIDING OFFICER. The clerk will report the bill.

The assistant legislative clerk read as follows:

A bill (S. 1904) to strictly limit the use of lie detector examinations by employers involved in or affecting interstate commerce.

The Senate proceeded to consider the bill, which had been reported from the Committee on Labor and Human Resources, with an amendment to strike all after the enacting clause and insert in lieu thereof, the following:

presently detained temporarily in a conference.

Mr. METZENBAUM. I thank the leader.

The PRESIDING OFFICER [Mr. ADAMS]. The Senator from West Virginia has yielded to the Senator from Ohio.

WORLD BANK LOAN FOR MEXICO'S STEEL INDUSTRY

Mr. METZENBAUM. Mr. President, I send a sense-of-the-Senate resolution to the desk, on behalf of myself, Senator HEINZ and Senator DIXON regarding a World Bank loan for Mexico's steel industry.

Two days from now, the World Bank is scheduled to consider approving a $400 million loan to help Mexico restructure its ailing steel industry.

The administration thinks its a good idea.

They couldn't be more wrong.

How can the United States, as a prominent member of the World Bank help Mexico turn its steel industry around with subsidized financing when it will not lift a finger for the steel industy here at home?

Why back an effort which could help a foreign country make more and better steel? There's already worldwide overcapacity.

Why back an effort which could wind up costing American workers their jobs?

It isn't fair.

It doesn't make sense.

Certainly I'm concerned about Mexico's financial woes. The stability of our friend and neighbor is critical to our own national interest.

But I'm just as concerned about the need to maintain a strong domestic steel industry. That's critical to our national interest too.

It makes no sense to provide subsidies to help Mexico restructure its steel industry while turning a deaf ear to domestic steel companies and workers.

But that is the present course of our Government.

Indeed, the administration has called it folly to pump Federal dollars into domestic steel companies.

This administration calls saving American jobs "folly."

I call their steel policy a three-ring circus.

The administration boasts that Mexico has agreed to change its own subsidy and pricing practices for steel as a concession for obtaining this loan. For instance, they say Mexico has expressed a willingness to raise its own low energy prices which have helped keep the cost of Mexican steel down.

This, the administration argues, will help make Mexican steel more competitive with U.S. steel.

It's outrageous for the administration to support a policy that would modernize our foreign competitors. It's nonsense for the administration to enable Mexico to produce more with less, all at the expense of the United States' industry.

If this is part of the administration's "competitiveness" strategy then it is the most absurd investment our Nation could make.

In fact, Mr. President, it is such a bad idea the administration has been too embarrassed to share it with us.

It was only yesterday that the administration informed some of our staffs about the proposed loan. They gave us less than 3 days' notice.

Mr. President, Mexico is facing an economic crisis. It needs our help, and we should do all we can to be a good friend to our neighbor. But I'm sure the U.S. Government, and the World Bank, can find more worthwhile projects to support than this one.

Our Government has the ability to block this loan. The U.S. Government provides the World Bank with 20 percent of its funding. It has a crucial voice in deciding which projects are funded. It is a voice that needs to be raised to just say no.

That is why I am offering this sense-of-the-Senate resolution today urging the U.S. Government to use its best efforts to prevent the approval of this loan.

Over the past decade, U.S. steel companies have lost billions of dollars. Bankruptcies have proliferated. Plants have shutdown and communities have been destroyed. Precious Federal resources should be aimed at helping American workers and industry, not revitalizing a foreign one.

I urge my colleagues to support this sense-of-the-Senate resolution.

Mr. President, I ask unanimous consent at this point that I include in the RECORD a letter from Bethlehem Steel Corp., and another letter from LTV Corp.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

LTV STEEL CO.,
Cleveland, OH, March 1, 1988.

Hon. HOWARD METZENBAUM,
U.S. Senate,
Washington, DC.

DEAR SENATOR METZENBAUM: Yesterday we were advised by representatives of the Department of Treasury that the World Bank intends to provide a $400 million loan to the Mexican steel industry for its restructuring and modernization. This loan is justified on the basis that Mexico intends to reduce its trade restrictions and some Mexican steel industry capacity will be eliminated.

We believe that loan should be opposed by the Treasury Department. Worldwide steel over capacity is recognized as a "root" problem to the world steel industry's current dilemma. This proposal, while eliminating some inefficient capacity, appears to, through its modernization program, have the effect of increasing the Mexican steel industry's net capacity, particularly in quality flat rolled steel products.

We believe it is fundamentally wrong to use U.S. taxpayer dollars to subsidize restructuring and modernization of the Mexican steel industry. The end result can only exacerbate the world over capacity problem, limit United States export opportunities and, absent VRA continuation, further threaten the domestic steel marketplace.

We urge to oppose this action.

Very truly yours,

DAVID L. CARROLL,
Vice President, Public Affairs.

BETHLEHEM STEEL CORP.,
Bethlehem, PA, March 1, 1988.

Hon. HOWARD M. METZENBAUM,
Senate Office Building,
Washington, DC.

DEAR HOWARD: I have just learned of the proposed World Bank loan of $400 million to assist the Mexican steel industry in its restructuring efforts. This initiative appears to be proceeding despite the continuing world steel crisis and despite the Mexican government's deplorable record in managing its state-owned Sidermex steel producing operations.

I strongly object to any such loan unless and until a clear case has been made before the Steel Caucus on its merits. I would greatly appreciate any efforts by you and your Senate colleagues to assure that the World Bank is working toward the common good before any such loan is made.

Yours truly,

WALTER F. WILLIAMS.

Mr. METZENBAUM. Mr. President, I ask unanimous consent that additional Senators may be added as original cosponsors before the close of business this day.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. METZENBAUM. Mr. President, I ask unanimous consent that the resolution be held at the desk pending further action of this body.

Mr. BYRD. Reserving the right to object, Mr. President, may I say that there is a request for this to be referred to the committee, to the Foreign Relations Committee. There would be an objection to holding it at the desk. If the Senator would change his request to that of asking that it be held at the desk for the remainder of the day and then be referred to the committee, I do not think I would have to object to that.

I am in sympathy with the objective of the Senator because I have steel mills in my State, of course, and I am interested in this matter. But I do have an objection that I would have to make on behalf of another Senator. If the Senator will change his request as I have proposed, I believe that would be agreeable.

Mr. METZENBAUM. Under the circumstances, the Senator from Ohio would change his unanimous consent request that it be held at the desk for the balance of the business day, and then referred to committee unless further action is dictated by the body prior thereto.

The PRESIDING OFFICER. Without objection, the resolution will be held at the desk for the remainder of the day, and the resolution will be referred to the appropriate committee.

ORDER OF PROCEDURE

Mr. BYRD addressed the Chair.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Polygraph Protection Act of 1987".

SEC. 2. DEFINITIONS.

As used in this Act:

(1) COMMERCE.—The term "commerce" has the meaning provided by section 3(b) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(b)).

(2) EMPLOYER.—The term "employer" includes any person acting directly or indirectly in the interest of an employer in relation to an employee or prospective employee.

(3) LIE DETECTOR TEST.—The term "lie detector test" includes—

(A) any examination involving the use of any polygraph, deceptograph, voice stress analyzer, psychological stress evaluator, or any other similar device (whether mechanical, electrical, or chemical) that is used, or the results of which are used, for the purpose of rendering a diagnostic opinion regarding the honesty or dishonesty of an individual; and

(B) the testing phases described in paragraphs (1), (2), and (3) of section 8(c).

(4) POLYGRAPH.—The term "polygraph" means an instrument that records continuously, visually, permanently, and simultaneously changes in the cardiovascular, respiratory, and electrodermal patterns as minimum instrumentation standards.

(5) RELEVANT QUESTION.—The term "relevant question" means any lie detector test question that pertains directly to the matter under investigation with respect to which the examinee is being tested.

(6) SECRETARY.—The term "Secretary" means the Secretary of Labor.

(7) TECHNICAL QUESTION.—The term "technical question" means any control, symptomatic, or neutral question that, although not relevant, is designed to be used as a measure against which relevant responses may be measured.

SEC. 3. PROHIBITIONS ON LIE DETECTOR USE.

Except as provided in section 7, it shall be unlawful for any employer engaged in or affecting commerce or in the production of goods for commerce—

(1) directly or indirectly, to require, request, suggest, or cause any employee or prospective employee to take or submit to any lie detector test;

(2) to use, accept, refer to, or inquire concerning the results of any lie detector test of any employee or prospective employee;

(3) to discharge, dismiss, discipline in any manner, or deny employment or promotion to, or threaten to take any such action against—

(A) any employee or prospective employee who refuses, declines, or fails to take or submit to any lie detector test; or

(B) any employee or prospective employee on the basis of the results of any lie detector test; or

(4) to discharge, discipline, or in any manner discriminate against an employee or prospective employee because—

(A) such employee or prospective employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act;

(B) such employee or prospective employee has testified or is about to testify in any such proceeding; or

(C) of the exercise by such employee, on behalf of such employee or another person, of any right afforded by this Act.

SEC. 4. NOTICE OF PROTECTION.

The Secretary shall prepare, have printed, and distribute a notice setting forth excerpts from, or summaries of, the pertinent provisions of this Act. Each employer shall post and maintain such notice, in conspicuous places on its premises where notices to employees and applicants to employment are customarily posted.

SEC. 5. AUTHORITY OF THE SECRETARY.

(a) IN GENERAL.—The Secretary shall—

(1) issue such rules and regulations as may be necessary or appropriate to carry out this Act;

(2) cooperate with regional, State, local, and other agencies, and cooperate with and furnish technical assistance to employers, labor organizations, and employment agencies to aid in effectuating the purposes of this Act; and

(3) make investigations and inspections and require the keeping of records necessary or appropriate for the administration of this Act.

(b) SUBPOENA AUTHORITY.—For the purpose of any hearing or investigation under this Act, the Secretary shall have the authority contained in sections 9 and 10 of the Federal Trade Commission Act (15 U.S.C. 49 and 50).

SEC. 6. ENFORCEMENT PROVISIONS.

(a) CIVIL PENALTIES.—

(1) IN GENERAL.—Subject to paragraph (2)—

(A) any employer who violates section 4 may be assessed a civil money penalty not to exceed $100 for each day of the violation; and

(B) any employer who violates any other provision of this Act may be assessed a civil penalty of not more than $10,000.

(2) DETERMINATION OF AMOUNT.—In determining the amount of any penalty under paragraph (1), the Secretary shall take into account the previous record of the person in terms of compliance with this Act and the gravity of the violation.

(3) COLLECTION.—Any civil penalty assessed under this subsection shall be collected in the same manner as is required by subsections (b) through (e) of section 503 of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1853) with respect to civil penalties assessed under subsection (a) of such section.

(b) INJUNCTIVE ACTIONS BY THE SECRETARY.—The Secretary may bring an action to restrain violations of this Act. The district courts of the United States shall have jurisdiction, for cause shown, to issue temporary or permanent restraining orders and injunctions to require compliance with this Act.

(c) PRIVATE CIVIL ACTIONS.—

(1) LIABILITY.—An employer who violates this Act shall be liable to the employee or prospective employee affected by such violation. Such employer shall be liable for such legal or equitable relief as may be appropriate, including but not limited to employment, reinstatement, promotion, and the payment of lost wages and benefits.

(2) COURT.—An action to recover the liability prescribed in paragraph (1) may be maintained against the employer in any Federal or State court of competent jurisdiction by any one or more employees for or in behalf of himself or themselves and other employees similarly situated.

(3) COSTS.—The court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.

(d) WAIVER OF RIGHTS PROHIBITED.—The rights and procedures provided by this Act may not be waived by contract or otherwise, unless such waiver is part of a written settlement of a pending action or complaint, agreed to and signed by all the parties.

SEC. 7. EXEMPTIONS.

(a) NO APPLICATION TO GOVERNMENTAL EMPLOYERS.—The provisions of this Act shall not apply with respect to the United States Government, a State or local government, or any political subdivision of a State or local government.

(b) NATIONAL DEFENSE AND SECURITY EXEMPTION.—

(1) NATIONAL DEFENSE.—Nothing in this Act shall be construed to prohibit the administration, in the performance of any counterintelligence function, of any lie detector test to—

(A) any expert or consultant under contract to the Department of Defense or any employee of any contractor of such Department; or

(B) any expert or consultant under contract with the Department of Energy in connection with the atomic energy defense activities of such Department or any employee of any contractor of such Department in connection with such activities.

(2) SECURITY.—Nothing in this Act shall be construed to prohibit the administration, in the performance of any intelligence or counterintelligence function, of any lie detector test to—

(A)(i) any individual employed by, or assigned or detailed to, the National Security Agency or the Central Intelligence Agency, (ii) any expert or consultant under contract to the National Security Agency or the Central Intelligence Agency, (iii) any employee of a contractor of the National Security Agency or the Central Intelligence Agency, or (iv) any individual applying for a position in the National Security Agency or the Central Intelligence Agency; or

(B) any individual assigned to a space where sensitive cryptologic information is produced, processed, or stored for the National Security Agency or the Central Intelligence Agency.

(c) EXEMPTION FOR FBI CONTRACTORS.—Nothing in this Act shall be construed to prohibit the administration, in the performance of any counterintelligence function, of any lie detector test to an employee of a contractor of the Federal Bureau of Investigation of the Department of Justice who is engaged in the performance of any work under the contract with such Bureau.

(d) LIMITED EXEMPTION FOR ONGOING INVESTIGATIONS.—Subject to section 8, this Act shall not prohibit an employer from requesting an employee to submit to a polygraph test if—

(1) the test is administered in connection with an ongoing investigation involving economic loss or injury to the employer's business, including theft, embezzlement, misappropriation, or an act of unlawful industrial espionage or sabotage;

(2) the employee had access to the property that is the subject of the investigation;

(3) the employer has a reasonable suspicion that the employee was involved in the incident or activity under investigation; and

(4) the employer—

(A) files a report of the incident or activity with the appropriate law enforcement agency;

(B) files a claim with respect to the incident or activity with the insurer of the employer, except that this subparagraph shall not apply to a self-insured employer;

(C) files a report of the incident or activity with the appropriate government regulatory agency; or

(D) executes a statement that—

(i) sets forth with particularity the specific incident or activity being investigated and the basis for testing particular employees;

(ii) is signed by a person (other than a polygraph examiner) authorized to legally bind the employer;

(iii) is provided to the employee on request;

(iv) is retained by the employer for at least 3 years; and

(v) contains at a minimum—

(I) an identification of the specific economic loss or injury to the business of the employer;

(II) a statement indicating that the employee had access to the property that is the subject of the investigation; and

(III) a statement describing the basis of the employer's reasonable suspicion that the employee was involved in the incident or activity under investigation.

SEC. 8. RESTRICTIONS ON USE OF EXEMPTIONS.

(a) OBLIGATION TO COMPLY WITH CERTAIN LAWS AND AGREEMENTS.—The limited exemption provided under section 7(d) shall not diminish an employer's obligation to comply with—

(1) applicable State and local law; and

(2) any negotiated collective bargaining agreement,

that limits or prohibits the use of lie detector tests on employees.

(b) TEST AS BASIS FOR ADVERSE EMPLOYMENT ACTION.—Such exemption shall not apply if an employee is discharged, dismissed, disciplined, or discriminated against in any manner on the basis of the analysis of one or more polygraph tests or the refusal to take a polygraph test, without additional supporting evidence. The evidence required by section 7(d) may serve as additional supporting evidence.

(c) RIGHTS OF EXAMINEE.—Such exemption shall not apply unless the requirements described in section 7 and paragraphs (1), (2), and (3) are met.

(1) PRETEST PHASE.—During the pretest phase, the prospective examinee—

(A) is provided with reasonable notice of the date, time, and location of the test, and of such examinee's right to obtain and consult with legal counsel or an employee representative before each phase of the test;

(B) is not subjected to harassing interrogation technique;

(C) is informed of the nature and characteristics of the tests and of the instruments involved;

(D) is informed—

(i) whether the testing area contains a two-way mirror, a camera, or any other device through which the test can be observed;

(ii) whether any other device, including any device for recording or monitoring the conversation will be used; or

(iii) that the employer and the examinee, may with mutual knowledge, make a recording of the entire proceeding;

(E) is read and signs a written notice informing such examinee—

(i) that the examinee cannot be required to take the test as a condition of employment;

(ii) that any statement made during the test may constitute additional supporting evidence for the purposes of an adverse employment action described in section 8(b);

(iii) of the limitations imposed under this section;

(iv) of the legal rights and remedies available to the examinee if the polygraph test is not conducted in accordance with this Act; and

(v) of the legal rights and remedies of the employer; and

(F) is provided an opportunity to review all questions (technical or relevant) to be asked during the test and is informed of the right to terminate the test at any time; and

(G) signs a notice informing such examinee of—

(i) the limitations imposed under this section;

(ii) the legal rights and remedies available to the examinee if the polygraph test is not conducted in accordance with this Act; and

(iii) the legal rights and remedies of the employer.

(2) ACTUAL TESTING PHASE.—During the actual testing phase—

(A) the examinee is not asked any questions by the examiner concerning—

(i) religious beliefs or affiliations;

(ii) beliefs or opinions regarding racial matters;

(iii) political beliefs or affiliations;

(iv) any matter relating to sexual behavior; and

(v) beliefs, affiliations, or opinions regarding unions or labor organizations;

(B) the examinee is permitted to terminate the test at any time;

(C) the examiner does not ask such examinee any question (technical or relevant) during the test that was not presented in writing for review to such examinee before the test;

(D) the examiner does not ask technical questions of the examinee in a manner that is designed to degrade, or needlessly intrude on, the examinee;

(E) the examiner does not conduct a test on an examinee when there is written evidence by a physician that the examinee is suffering from a medical or psychological condition or undergoing treatment that might cause abnormal responses during the test; and

(F) the examiner does not conduct and complete more than five polygraph tests on a calendar day on which the test is given, and does not conduct any such test for less than a 90-minute duration.

(3) POST-TEST PHASE.—Before any adverse employment action, the employer must—

(A) further interview the examinee on the basis of the results of the test; and

(B) provide the examinee with—

(i) a written copy of any opinion or conclusion rendered as a result of the test; and

(ii) a copy of the questions asked during the test along with the corresponding charted responses.

(d) QUALIFICATIONS OF EXAMINER.—Such exemptions shall not apply unless the individual who conducts the polygraph test—

(1) is at least 21 years of age;

(2) has complied with all required laws and regulations established by licensing and regulatory authorities in the State in which the test is to be conducted;

(3)(A) has successfully completed a formal training course regarding the use of polygraph tests that has been approved by the State in which the test is to be conducted or by the Secretary; and

(B) has completed a polygraph test internship of not less than 6 months duration under the direct supervision of an examiner who has met the requirements of this section;

(4) maintains a minimum of a $50,000 bond or an equivalent amount of professional liability coverage;

(5) uses an instrument that records continuously, visually, permanently, and simultaneously changes in the cardiovascular, respiratory, and electrodermal patterns as minimum instrumentation standards;

(6) bases an opinion of deception indicated on evaluation of changes in physiological activity or reactivity in the cardiovascular, respiratory, and electrodermal patterns on the lie detector charts;

(7) renders any opinion or conclusion regarding the test—

(A) in writing and solely on the basis of an analysis of the polygraph charts;

(B) that does not contain information other than admissions, information, case facts, and interpretation of the charts relevant to the purpose and stated objectives of the test; and

(C) that does not include any recommendation concerning the employment of the examinee; and

(8) maintains all opinions, reports, charts, written questions, lists, and other records relating to the test for a minimum period of 3 years after administration of the test.

(e) PROMULGATION OF STANDARDS.—The Secretary shall establish standards governing individuals who, as of the date of the enactment of this Act, are qualified to conduct polygraph tests in accordance with applicable State law. Such standards shall not be satisfied merely because an individual has conducted a specific number of polygraph tests previously.

SEC. 9. DISCLOSURE OF INFORMATION.

(a) IN GENERAL.—A person, other than the examinee, may not disclose information obtained during a polygraph test, except as provided in this section.

(b) PERMITTED DISCLOSURES.—A polygraph examiner, polygraph trainee, or employee of a polygraph examiner may disclose information acquired from a polygraph test only to—

(1) the examinee or any other person specifically designated in writing by the examinee;

(2) the employer that requested the test; or

(3) any person or governmental agency that requested the test as authorized under subsection (a), (b), or (c) of section 7 or any other person, as required by due process of law, who obtained a warrant to obtain such information in a court of competent jurisdiction.

(c) DISCLOSURE BY EMPLOYER.—An employer (other than an employer covered under subsection (a), (b), or (c) of section 7) for whom a polygraph test is conducted may disclose information from the test only to a person described in subsection (b).

SEC. 10. EFFECT ON OTHER LAW AND AGREEMENTS.

This Act shall not preempt any provision of any State or local law, or any negotiated collective bargaining agreement, that is more restrictive with respect to the administration of lie detector tests than this Act.

SEC. 11. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in subsection (b), this Act shall become effective 6 months after the date of enactment of this Act.

(b) REGULATIONS.—Not later than 120 days after the date of enactment of this Act, the Secretary shall issue such rules and regulations as may be necessary or appropriate to carry out this Act.

Mr. KENNEDY. Mr. President, it is quite apparent from the vote that was just taken that the Senate is prepared to debate this issue and hopefully reach an early conclusion to its consideration. I have talked with both my colleague and principal cosponsor, the Senator from Utah, as well as the majority leader—I have not had that opportunity with the minority leader—to try and spell out at least some kind of program for the benefit of the Members so that we would know how we might proceed and that we may move in an orderly way, taking such time as is necessary for the consideration of various amendments, but, nonetheless, to move on through the various amendments in an orderly procedure.

I do not know the disposition of those that are in opposition to the legislation, whether they are prepared to enter into any time agreement or not at this time or at any time. I would inquire, if there would be such a disposition or if there would be objection to

such disposition because, if there was no objection, then I would seek out the majority leader and see if he would propose some kind of a time consideration.

I see the Senator from Mississippi on his feet. I think I know what his response might be, but I would be glad to yield to him for a question without losing my right to the floor.

The PRESIDING OFFICER. The Senator from Mississippi has been yielded to for a question. The Senator from Massachusetts has the floor.

The Senator from Mississippi.

Mr. COCHRAN. Mr. President, just in response to the injuiry of the distinguished manager of the bill, I do know that there are serious objections to this bill on the part of several Senators. As a member of the committee, the chairman will remember, when we took it up, there were three votes in committee against the bill. I was one of those who voted against the bill when it was reported out. I do know there are amendments.

I do not imagine that it would be helpful at this time to put a unanimous consent request before the Senate. I think there would be an objection to limiting discussion or limiting amendments at this point.

So I would hope that we could go forward. There are amendments that will be offered. We can debate those and look at those. There is substantial opposition to the bill, I might say.

The PRESIDING OFFICER. The Senator from Massachusetts has the floor.

Mr. KENNEDY. I think the Senator has responded to the question. I hope, as one Member, that we can go ahead and proceed with the legislation and consider various amendments and try to do it in a timely fashion. I think, again, since there has been such an overwhelming vote in favor of considering it, I think that, since Members have indicated that the Senate should consider this resolution, we do not want to have an undue delay or undue debate and not have some kind of resolution of the various issues which might be raised. We are familiar with those that have been raised in the committee deliberations, and I imagine we will have a number of those again raised here this afternoon.

So I will make my statement, and the Senator from Utah will make his statement, and hopefully we will move ahead with the consideration of the various amendments and get on with the legislation.

Mr. President, today we begin consideration of S. 1904, the Polygraph Protection Act of 1987, introduced by myself and Senators HATCH, PELL, STAFFORD, MATSUNAGA, METZENBAUM, WEICKER, DODD, SIMON, HARKIN, ADAMS, and MIKULSKI on December 1 of last year.

On February 3, the Labor and Human Resources Committee reported the bill out favorably 13 to 3, with Senator HUMPHREY joining the 12 original sponsors.

The time has come to restrict the massive, unconscionable use of lie detectors in the workplace.

This legislation is a fundamental issue of workers' rights. Last year over 2 million workers were strapped to these inaccurate instruments of intimidation.

We know that in most applications, the devices cannot be trusted. It is time to put an end to their unacceptable misuse that unfairly places so many workers' jobs in jeopardy.

The abuse of polygraphs in the workplace has been a concern of Congress for almost 25 years. Scores of bills have been introduced and dozens of hearings held, but we have never taken final action. Meanwhile, the use of the machines has proliferated, especially in the workplace.

In 1964 a House Government Operations Subcommittee reported:

> There is no lie detector, neither machine nor human. People have been deceived by a myth that a metal box in the hands of an investigator can detect truth from deception.

A decade later, Senator Sam Ervin observed:

> A lie-detector test to innocent citizens simply wanting a job reverses our cherished presumption of innocence. If an employee refuses to submit to the test, he is automatically guilty. If he submits to the test, he is faced with the burden of proving his innocence.

All of these problems are compounded by the fact that science has increasingly found no scientific validity for polygraphs in the overwhelming majority of applications.

In hearings by the Senate Labor Committee in the last two Congresses, we received strong testimony supporting the conclusion reached by the Office of Technology Assessment in a technical memorandum published in 1983:

> While there is some evidence for the validity of polygraph testing as an adjunct to criminal investigations, there is very little research or scientific evidence to establish polygraph test validity in screening situations, whether they be preemployment, preclearance, periodic or aperiodic, random, or dragnet.

Beginning with Massachusetts in 1959, 21 States and the District of Columbia have restricted or prohibited the use of polygraphs in the workplace.

Similarly, the vast majority of courts refuse to admit polygraph tests as evidence of guilt or innocence, due to the documented unreliability of the tests.

Yet the use of these machines has climbed sharply in many jurisdictions in recent years. It is time for Congress to act to protect American employees from the massive misuse of this device, which columnist William Safire has called "the most blatant intrusion into personal freedom in this country today."

In the last Congress, the House of Representatives passed Congressman PAT WILLIAMS' private-sector ban on polygraphs, with five industry exemptions, by a vote of 236 to 173. The Senate Labor and Human Resources Committee reported out the Hatch-Kennedy bill, with no industry exemptions, by a margin of 11 to 5, with 4 Republicans and 7 Democrats voting to report it favorably. Congress adjourned, however, before full action by the Senate could take place.

In the current Congress, the House of Representatives has again passed the Williams bill, this time with only two industry exemptions, by an even wider margin of 254 to 158.

The bill before us today is an attempt to balance the interests of employers and employees, based on the known scientific evidence regarding polygraphs and their potential for abuse. It bans the use of preemployment and random testing, which make up 85 percent of the testing being conducted today and for which there is no demonstrable validity.

At the same time, the bill preserves the ability of employers to investigate specific losses under limited circumstances, with employee safeguards in place.

Under the bill, no employer can use a polygraph for preemployment testing of job applicants or random testing of employees. But employers can use the polygraph to investigate specific economic losses, by testing employees who had access to the property under investigation and who they have reasonable suspicion to believe were involved in the incident.

The employer must file a police report, an insurance claim, a report to a regulatory agency, or sign a written statement detailing the basis for the polygraph test, before requesting any employee to take the test.

No employee can be disciplined or dismissed for refusing to take the test or for failing the test without additional supporting evidence, and the test can only be conducted under carefully prescribed circumstances.

The bill does not apply to Federal, State, or local governments—because the Constitution does. Most public employees are constitutionally protected from polygraph tests, and the courts are increasingly affirming this protection.

On October 28, the Texas Supreme Court unanimously found that the State mental health agency's use of the polygraph "impermissably violates privacy rights" protected by the State constitution. The court went on to hold that this protection should yield only when the State can show that the intrusion is "reasonably warranted for the achievement of a compelling governmental objective that can only be achieved by no less intrusive, more reasonable means."

Constitutional protections for public employees, however, are not available

to private sector employees, and it is in the private sector that action by Congress is essential to safeguard workers' rights.

The principles of this legislation have widespread support from both business and labor. The bill before us is carefully balanced, and has received the support of many polygraph users.

A number of large employer organizations whose members currently use the test and who opposed the House bill, endorse and support our Senate measure.

The American Association of Railroads opposed the House bill, but endorses the Senate bill.

The American Bankers Association opposed the House bill, but endorses the Senate bill.

The National Association of Convenience Stores opposed the House bill, but endorses the Senate bill.

The National Grocer's Association opposed the House bill, but endorses the Senate bill.

The International Mass Retailers Association opposed the House bill, but endorses the Senate bill.

The National Retail Merchants' Association opposed the House bill, but endorses the Senate bill.

The National Restaurant Association opposed the House bill, but endorses the Senate bill.

The Securities Industry Association opposed the House bill, but endorses the Senate bill.

Some businesses oppose this balanced approach, and some employee advocates also oppose it. But it is a fair measure based on the scientific evidence available to us, and will offer millions of workers long overdue protection from an employment practice too frequently abused.

I urge my colleagues to reject amendments weakening this bill, to reject special interest exemptions, and to support this important step to safeguard the rights and the jobs of millions of American workers.

The PRESIDING OFFICER (Mr. FOWLER). The Senator from Utah.

Mr. HATCH. Mr. President, I am sure that few of my colleagues expected to see, during this Congress, the distinguished Senator from Massachusetts and myself standing side by side in support of a labor bill, but S. 1904, the Polygraph Protection Act of 1987, is a truly unique bill. It is a bipartisan measure that represents an equitable compromise of several important, but competing interests.

Applicants and employees have a right to be judged on the basis of their experience, their record, and their character. They should not be prejudged, stigmatized or condemned by the vagaries of a single test for which the accuracy in many instances is highly suspect. Conversely, in our country, it is a regrettable fact that employees steal. Workplace theft is not uncommon in the United States. But nevertheless, polygraphs, though important, are not always accurate, and even the courts of law reject them as an evidentiary tool in most jurisdictions of this country.

S. 1904, I think, addresses these two concerns by barring the use of polygraph examinations where they are the most likely to make a false identification, that is, in preemployment screening or random verification mechanism, but permitting the use of these tests where they are the most likely to be accurate, that is, when given in conjunction with an investigation of a specific incident.

During the last several years, the committee has been struggling with the problem of how best to remedy the problems caused by the widespread use of the polygraph in the private sector. It has been estimated that over 2 million Americans are given a polygraph examination every year, and for many, the exam is given in a manner which minimizes its chances for accuracy. Too often, the polygraph examination is given in an extremely short period of time. These are called 15-minute quickie polygraphs, and the possibility of false identification, especially of honest applicants, is extremely high.

The committee has established a rather extensive record of the abuse and misuse of lie detectors, a record that proves quite conclusively that the existing patchwork of State and local regulation simply does not work. Employers have been rather candid in their admission that the local prohibitions are easily circumvented. Unfortunately, it would appear that many companies hire in one jurisdiction intending to employ in another, their sole reason for this tactic being to avoid existing polygraph restrictions.

And perhaps, most importantly, there is no scientific evidence that demonstrates clearly that the preemployment polygraph actually works. Instead, a reading of the existing literature makes it quite clear that, while the polygraph has some validity when used in conjunction with an investigation, it cannot predict future performance.

On the other hand, Mr. President, it is also clear that we have a problem of theft in the workplace, and we do. Something has to be done about that. Although it is not pleasant to admit, it is a fact that many employees, for a variety of reasons, steal. While it is important that we protect the rights of all citizens, we cannot at the same time eliminate every effective mechanism that an employer has available today to combat crime in the workplace.

It was these facts and considerations, Mr. President, that led to the formulation of S. 1904. By structuring the bill as we have done, we have protected the rights of employees and applicants without jeopardizing the ability and rights of an employer to maintain a safe and crime-free workplace.

There are a few key provisions about the bill, Mr. President, that I would like to highlight. First, the bill does not attempt to regulate Federal, State, or local government use of the polygraph, thus avoiding conflicts with the traditional police powers of State and local governments.

Second, the bill makes clear that the results of a polygraph examination may not be the sole basis for taking an adverse employment action against an employee. Even the most passionate advocates of the polygraph have told the committee that an employer should base its decision on more than just the results of an exam.

Third, the bill resolves the difficulties which arise when an employee refuses to take a polygraph examination. Under this legislation, an employer may not give a polygraph test unless there is a sufficient evidentiary basis warranting the test. As the committee notes in its report on S. 1904, an employer must have a reasonable suspicion that the employee was involved in the incident or activity in question, and that the employee had access. The report goes on to define "reasonable suspicion" to include some observable, articulate basis in fact, such as demeanor of the employee, the totality of the circumstances surrounding his or her access to the property, and discrepancies of fact which arise during the investigaiton.

Once this evidentiary basis is established, an employer can request that an employee take a polygraph examination. If the employee does not pass the test, this failure, combined with the already established evidentiary basis, is sufficient justification at least with regard to this act for taking an adverse employment action against the employee.

Any employee refusing to take an examination is treated under this legislation the same as one who did not pass the polygraph examination. An employer is free to take any action deemed appropriate. Without this provision, an employer would be taking a serious legal risk when requesting a polygraph exam and, as a result, few would probably ever choose to make such a request.

Fourth, an employer is free to act upon statements or confessions made during the examination process. In my opinion, when such statements are made in the controlled forum envisoned by the bill, that is, in conjunction with an investigation of economic loss or injury, action upon such statements is warranted.

Finally, the bill sets forth several general standards concerning both how a test can be given and the qualifications of an examiner. While the American Polygraph Association does not endorse this legislation, their recommendations in this area were heavily relied upon, and most of the provisions in this section of the bill mirror suggestions that their representatives have made to the committee. Again, I do not want my colleagues to be

misled by these comments and presume that the association endorses the bill. They most certainly do not.

While these observations are by no means an exhaustive summary of the provisions of S. 1904, they highlight the care given to the construction of the bill and the utility of the provisions which permit use of a polygraph examination.

In sum, S. 1904 represents a careful balancing, after much consideration, of a variety of competing interests. I would like to say a word about the principal union advocating passage of this statute—the United Food and Commercial Workers International Union. In the past, I have earned, I think, a somewhat undeserved reputation for fighting labor-backed legislation, but I have fought labor-backed legislation which would throw undue power toward the union movement. At those times, I have repeatedly said that when the unions were right, when the legislation they advocated was both necessary and equitable, they would find an advocate in the Senator from Utah.

I supported their efforts to pass the Labor-Management Racketeering Act. I was happy to see that legislation enacted into law. I was glad to assist Senator MOYNIHAN with the Senate's ratification of ILO Conventions 144 and 147 earlier this year. Both efforts were endorsed by the labor movement, and it is no secret they are very pleased with both of those matters. I am happy to be the principal cosponsor of S. 1904, and of course I could list others.

We all know that this body will have an opportunity before the November elections to vote on several items on the labor agenda. Several of these bills, such as the so-called double-breasting bill, will be vigorously opposed, because they are little more than heavy-handed attempts to throw power to unions at the expense of employees, open shop workers, minorities and employers. Proposals such as this raise serious questions, in my mind, as to the quality of leadership of our union movement at times.

S. 1904, the Polygraph Protection Act of 1987, is not such a bill. William Wynn, the president of the United Food and Commercial Workers International Union, should be congratulated for his willingness and foresight to fashion a compromise that addresses not just the needs of his members but the needs of employers also. As one of the few Members of this august body to rise up through the ranks of a trade union, I am proud that the union movement has leaders like Bill Wynn. His willingness to approach this issue with an open mind, to work with both sides of the aisle, and with anyone interested in resolving this problem are some of the key reasons that, unlike other labor bills, S. 1904 has an excellent chance, to become law.

Finally, Mr. President, I congratulate the chairman of the Committee on Labor and Human Resources for his handling of S. 1904 and his efforts to move this bill on the floor. Federal treatment of polygraph examinations could have been an issue where both sides retreated to their respective camps and let action drown in a sea of polemic speeches. Instead, the Senator from Massachusetts has served as the catalyst for the compromise now before us.

I hope my colleagues will take notice of today's unusual alliance on a labor issue. S. 1904 is an effective, equitable solution to the problem of polygraph use in the private sector, and I ask that all of my colleagues join in supporting this important piece of legislation.

This bill is an effective and workable solution to a vexing problem—how do we address the problems arising from polygraph use in the private sector without jeopardizing an employer's ability to combat crime in the workplace.

The polygraph examination was originally developed to assist criminal investigations within the law enforcement community. It was intended to help police investigators determine whether the individual taking the test had actually committed a specific act. In describing this kind of test during his testimony before the Committee of Labor and Human Resources in 1986, Dr. David Raskin, a noted polygraph expert and professor of psychology at the University of Utah, made the following observations:

The control question technique is the test most generally used in criminal investigations and other situations involving past events, such as theft from an employer or civil litigation. It incorporates questions specially designed to overcome many of the problems inherent in the relevant-irrelevant test. During an extensive and complicated pretest interview which usually lasts at least an hour, the relevant and control questions are reviewed with the subject prior to their presentation during the test phase. The control questions are designed to cause an innocent person more concern than the relevant question, and the innocent person is expected to show stronger reactions to them. In the theft example, a control question might be "During the first 23 years of your life, did you ever take something which did not belong to you?" That question is worded and explained by the examiner in such a way that the subject will answer "No" to that question. Even though innocent subjects are certain of the truthfulness of their answers to the relevant questions, they will be concerned about failing the test because of deception or uncertainty about being truthful in answering "No" to the control questions on the test. The control questions are deliberately vague, cover a long period in the subject's prior life, and include acts which almost everyone has committed but are embarrassed to admit in the context of a psychologically proper polygraph examination. On the other hand, guilty subjects are more concerned about failing the test because they know that they are being deceptive to the relevant questions.

The outcome of a control question tests is evaluated by a numerical scoring system which is highly reliable. If the reactions are stronger to the relevant questions, the subject is diagnosed as deceptive. However, stronger reactions to the control as compared to the relevant questions are indicative of truthfulness to the relevant questions. The control question procedure also takes into account the individual reactivity of the subject. Any factor which produces a generally high or low level of reactivity will result in little difference between the reactions to the relevant control questions, and the outcome will be inconclusive instead of wrong. The control question test is administered according to a standard format, and the examination usually takes at least two hours.

In most criminal investigations an incident has already occurred, and such methods are designed to assess the credibility of suspects who deny knowledge or involvement in criminal activity and informants who offer information about the incident, usually for some personal gain. Thus, applications in criminal investigation attempted to determine truth or deception with regard to a specific event which has already occurred. Furthermore, every person has a constitutional right to refuse to take such a test without prejudice. Polygraph techniques were originally developed for such situations, and the scientific evidence indicates that the control question test may attain accuracies in the range of 85 to 95 percent when assessing credibility regarding a past event.

Unfortunately, the most prominent use of polygraphs in the private sector is not in conjunction with an investigation of a specific incident. Instead, today many employers use polygraphs to screen applicants. The tests are used to judge whether an individual is likely to be an honest and hard working employee, to give the employer some sense of security about the people he is hiring.

The obvious problem with such use, however, is that the polygraph was not designed to predict future performance. Consequently, the chances for false identification are much higher. And, in the preemployment area, these mistakes tend to be false positives instead of false negatives. As Dr. Raskin observed:

Whether we consider the laboratory or field results, many more errors are made by incorrectly labeling innocent subjects as deceptive than by labeling guilty subjects as truthful. Those findings are consistent throughout the scientific literature and emphasize the need for caution in the interpretation of deceptive outcomes on polygraph tests, especially when the results of such tests are used in the employment context where individuals may be required to take the tests and their employability may be determined entirely by the findings of the polygraph examiner.

The problem of false positive errors is magnified in those situations where the incidence of deception is relatively low. That is known as the problem of baserate. When the proportion of examinees practicing deception differs from 50 percent, the confidence in the outcome of a test is not the same as the average accuracy of the test. When most of the individuals tested are actually being truthful, many of the deceptive outcomes are errors in labeling truthful people as deceptive. Therefore, the confidence in a deceptive test outcome is much lower than we might expect with a highly accurate test.

When the proportion of guilty people among those who are tested is slight, which is the case in preemployment testing, the confidence that can be placed in a finding of deception is not high. For example, if we assume that one out of every five persons taking a preemployment polygraph test is, in fact, guilty, and we are assuming that the overall may be as high as 85 percent, which is rarely the case in preemployment screening, almost half of the individuals who fail the test are in fact innocent.

It is estimated that there are approximately 2 million people a year taking polygraph tests. Under the example above, with the extremely generous assumption of 85-percent accuracy, roughly 320,000 honest people each year would be labeled as deceptive because of false positive errors. Given the reality about polygraphs in the workplace today, some experts believe the number of false identifications exceeds half a million each year.

It is interesting to note that these figures are based upon the assumption that the polygraph is being given in an above board manner by competent examiners. Unfortunately, we also know this assumption is false.

Too often applicants are subjected to the 15 minute special, where the level of accuracy is impossible to determine. During his testimony before the committee, F. Lee Bailey, a staunch advocate of the polygraph, stated that such tests were not polygraph tests. He went on to say that the type of examination he was defending takes a minimum of 3 to 4 hours to complete. The record is quite clear, Mr. President, that few employers are giving 3 to 4 hour polygraph examinations.

In sum, the committee has a rather extensive record, on both a practical and scientific basis, indicating that preemployment polygraph examinations are not accurate. As the American Psychological Association has noted:

> Despite many years of development of the polygraph, the scientific evidence is still unsatisfactory for the validity of psychophysiological indicators to infer deceptive behavior. Such evidence is particularly poor concerning the polygraph use in employment screening.

The traditional response to these findings is to list examples of confessions that have been given by applicants terrified by the prospects of taking a polygraph examination. In fact, some assert that the real benefit of these tests is not the results of the examination but their inherent ability to terrify applicants into confession.

While no one can doubt the confessional aspect of these exams, this feature is obtained at significant cost. Is branding as liars over half a million honest people each year a cost my colleagues are willing to pay to obtain the occasional terrified confession? I think not.

Another typical complaint heard is that it is true that polygraphs have been abused and misused, but that it is an issue that is best left for the States. Stephen B. Markman, Assistant Attorney General for Legal Policy made the following observation:

> The Framers of the Constitution set up a structure that apportions power between the national and state governments. The values that underlie this structure of federalism are not anachronisitic; they are not the result of an historic accident; they are no less relevant to the United States in 1986 than they were to our Nation in 1789. In weighing whether a public function ought to be performed at the national or state level, we should consider the basic values that our federalist system seeks to ensure. Some of those principles include:
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> *Dispersal of Power.*—By apportioning and compartmentalizing power among the national and 50 state governments, the power of government generally is dispersed and thereby limited.
>
> *Accountability.*—State governments, by being closer to the people, are better positioned as a general matter to act in a way that is responsive and accountable to the needs and desires of their citizens.
>
> *Participation.*—Because state governments are closer to the people, there is the potential for citizens to be more directly involved in setting the direction of their affairs. This ability is likely to result in a stronger sense of community and civic virtue as the people themselves are more deeply involved in defining the role of their government.
>
> *Diversity.*—Ours is a large and desparate nation; the citizens of different states may well have different needs and concerns. Federalism permits a variegated system of government most responsive to their diverse array of sentiment. It does not require that public policies conform merely to a low common denominator; rather, it allows for the development of policies that more precisely respond to the felt needs of citizens within different geographical areas.
>
> *Competition.*—Unlike the national government which is necessarily monopolistic in its assertion of public authority, the existence of the states introduces a sense of competition into the realm of public policy. If, ultimately, a citizen is unable to influence and affect the policies of his or her state, an available option always exists to move elsewhere. This option, however limited, enhances in a real way the responsiveness of state governments in a way unavailable to the national government.
>
> *Experimentation.*—The states, by providing diverse responses to various issues which can be compared and contrasted, serve as laboratories of public policy experimentation. Such experimentation is ultimately likely to result in superior and in some instances naturally uniform policies, as states reassess their own and other states' experiences under particular regulatory approaches.
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> *Containment.*—Experimenting with varying forms of regulation on a smaller, state scale rather than on a uniform, national scale confines the harmful effects of regulatory actions that prove more costly or detrimental than expected. Thus, while the successful exercises in state regulation are likely to be emulated by other states, the unsuccessful exercises can be avoided.
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> While these values of federalism may often mitigate in favor of state rather than national action, other factors—including a demonstrated need for national policy uniformity or for a monolithic system of enforcement—mitigate in favor of action by the national government and must be balanced in this process. For example, the need for a uniform foriegn policy on the part of the United States clearly justifies national rather than state action in this area. Similarly, in the interstate commerce area, the need for a uniform competition policy argues strongly for national antitrust law; and the need for efficient flow of interstate transportation argues for national rather than state regulation of airplane and rail safety. In other words, by federalism, we are not referring to the idea expressed in the Constitution that certain governmental functions are more properly carried out at the level of the 50 states, while others are more properly carried out by the national government.
>
> While reasonable individuals may well differ on the direction in which these and other factors of federalism point—and that may well be the case in the context of S. 1815—it is nevertheless critical that we not lose sight of the need to go through this analytic process.
>
> When these factors are examined in the context of polygraph regulation, the balance in the Administration's judgment is clearly struck in favor of state, not national, regulation. Not only is there no need for national enforcement or uniformity with respect to private sector polygraph use, but the benefits of leaving regulation to the states are evident; polygraph regulation is a complex issue, subject to extensive ongoing debate, in which a sustantial number of reasonable responses are available to (and have indeed been adopted by) the states.
>
> Whether or not polygraphs should be regulated by some level of government is not the issue here. Assuming that polygraphs are abused by private employers—and there is no question that such abuse is possible—the states are as capable as the national government of recognizing and remedying any such problem. In fact, they have the greater incentive to do so since the rights of their own citizens, to whom they are immediately accountable, are involved. As I indicated earlier, 70 percent of the states have already recognized a need for certain protections in this area and have provided them through various forms of state legislation.

The position of the Department is troubling for several reasons. First, it assumes incorrectly that Congress cannot preempt State law in the area of labor relations. In fact, most of the important aspects of labor relations have, over the last 50 years, become subject to Federal statutory law. The National Labor Relations Act of 1935, the Fair Labor Standards Act of 1938, the Labor-Management Reporting and Disclosure Act of 1959, the Civil Rights Act of 9164, the Age Discrimination in Employment Act of 1967, the Occupational Safety and Health Act of 1970, and the Rehabilitation Act of 1973 are just a few of the labor statutes enacted by Congress which have preempted State labor law.

Second, the test proffered by the Department of Justice is so stringent that it is doubtful whether any current Federal labor law or civil rights statute would satisfy its standards. If applied literally, it would appear to preclude congressional involvement, not only in the area of polygraph testing, but also in every employment practice currently regulated by the Federal Government. Congress, on the other hand, has consistently moved in the other direction, and it is difficult

to imagine an employment issue other than polygraph testing that is still beyond the purview of Federal control.

Since the 1940's, the U.S. Supreme Court has broadly defined interstate commerce, consistently ruling that Congress has virtually unlimited authority to enact legislation in the labor context. See *United States* v. *Darby*, 312 U.S. 100 (1941); *Wickard* v. *Filburn*, 317 U.S. 111 (1942). As Justice Stevens said in a recent decision:

Today, there should be universal agreement on the proposition that Congress has ample power to regulate the terms and conditions of employment throughout the economy.

Concerning opinion, *EEOC* v. *Wyoming*, 460 U.S. 226, 248 (1983).

It is interesting to note that during the testimony presented on behalf of the U.S. Department of Justice, the Department's witness admitted that it's opposition to S. 1815 would be considerably diminished if it could be shown that private employers were crossing state lines to avoid complying with polygraph bans in the States where they were operating. In fact, employer use of this deplorable practice is well documented.

Finally, the Department's position would have us ignore the one fact on which there seems to be a consensus of opinion—existing state restrictions and regulations have neither stopped or curtailed polygraph abuse.

It should be clear that there is a demonstrated need for uniform, national enforcement. The experience of the last 10 years has shown most vividly that State statutes, such as they are, have provided little effective protection for working men and women against those who intentionally misuse the polygraph instrument. To argue that the States can, and are, providing the best solution to polygraph abuse its tantamount to arguing that Congress should continue to ignore this pervasive problem.

Even where States do provide some regulations, it has often proved ineffectual. Take the case of Mary Braxton, who testified before the committee. She was required to sign a consent form when she was hired indicating her willingness to take a polygraph whenever her employer required her to do so. She worked for 5 years without any problems. In fact, on several occasions, she received promotions.

One day, she went to work and to her surprise was asked to take a test. She did and passed. The next day, which was her day off, her manager called and said she had to take another exam. Her own words best describe what happened when she showed up for the second test.

The examiner asked me, "Did I test you yesterday?"

I told him, "Yes, but my manager told me to come in and be retested today."

He called the manager, and after that he went about testing me again. Before he hooked me up, he went over some questions, like my name, whether I worked for the employer, how long I had worked there, and what was my position. He also asked me question about whether I had ever stolen, or if I knew of anyone who had. He did not write anything down, and I am not sure now whether he asked me all these questions before he hooked me up or while I was on the machine.

After the test, he looked puzzled and said something like, "Are you sure this is it? or "Is this all?" I felt like he was not satisfied with the way the test had come out.

He asked me some questions about money at the pottery, and I told him that I sometimes found money when I swept the floor. We had a cup over the register, and when we found money on the floor, we would put it there for anyone who needed some extra change for Cokes or things.

He then wrote up a statement saying that I had stolen $5 or $10 from the pottery. I refused to sign it. He got mad and threw the papers across the desk and onto the floor. At that point I got very nervous and wondered what in the world was going on. I was still doing 100 shakes a minute—as I am doing now. He would not test me again if I would not sign the paper. I agreed to sign the paper if he would give me another test, and the test would clear me. He retested me—it lasted about 5 minutes or less, because he went through the questions real fast. I spent no more than 20 minutes with the examiner that day.

After that, he showed my confession to my employer. He did not show them the test results. I had reported back to my building and was informed later that I had no job.

One of the employees walked up to me and stated that he stole every day, and he had taken the test, too, but had not gotten caught.

I felt betrayed, because I had built myself up on the job and had worked hard for my employer, and all of a sudden everything was gone. I was branded as a thief. I could not face the world, my friends, and my kids. When I told my kids, they felt bad about me being fired, and they could not understand because they said, "Mama, you don't steal."

They had a rough time in school, too, after that because other kids said that their mother had been fired because she stole.

My friends were supportive. They came by and told me I should fight the pottery on this. I did not talk to people other than my friends and family about it, because it was too painful. I cried many nights about it. I went to a doctor and got some pills to help me.

One day, about 2 weeks later, I just put it in my mind that I had to go look for a job. While I was applying for a job, I told the owner about what had happened to me, and he told me that he had heard about it. That made me feel bad, because I did not get the job, and because someone in the community knew about it, and I thought a lot of people must have been talking about it.

I applied for a number of jobs, but no one would hire me. I finally went to the unemployment office. I did not think I would get any benefits, but I did. The Pottery appealed the unemployment decision, and I went to legal aid. They helped me win again, and they told me that I might sue the Pottery and the Polygraph Examination Co. I won my case against the polygraph examiner and his company. And it took a number of years to live the story down. Now, if I have to look for a job, I tell the employer what happened to me and that I will not take a polygraph test. If the test is required, I do not want the job. So far that has worked well for me.

Ultimately, Mrs. Braxton won her law suit and a $21,000 judgment against the polygraph company, unfortunately, she never received a cent of her money, because the examiner packed up his bags and fled the State, free to practice his deplorable tactics in another jurisdiction.

Mr. President, the case for taking legislative action against the polygraph has been made. State regulation will not work, nor is there any scientific evidence that the polygraph can predict future performances. And, there seems to be little if any interest among private sector employers to conduct the type of exam, a 3- or 4-hour extensive polygraph test, that most polygraph experts believe is necessary to ensure some accuracy of result.

S. 1904 was drafted with these realities in mind. Its primary purpose is twofold. First, it prohibits preemployment and random polygraph tests, where the possibility of mistaken identifications are the highest, where the likelihood of identifying an honest person as a liar is prevalent. Second, it permits polygraph tests if given in conjunction with an investigation of economic loss or injury to the employer, where the likelihood of accuracy is highest.

The bill also requires that certain standards be met when giving such examinations and that examiners be sufficiently qualified, bonded, and controlled. S. 1904 also makes it clear that the polygraph, by itself, cannot be the sole basis for taking an adverse employment action. I might note, Mr. President, that this last point is one constantly stressed by every reputable polygrapher that I have talked with during the last 3 years.

In drafting such a bill, there are obviously a few key provisions. First, S. 1904 does not attempt to regulate Federal, State, or local government use of the polygraph. While the opponents of this legislation assert that this fact is one of the bill's most critical failings, I feel it is one of its real strengths.

I do not feel it is appropriate for the Committee on Labor and Human Resources to be interfering with the traditional police powers of State and local governments. Instead, S. 1904 carefully avoids such interference. As to the Federal Government, Congress has already established guidelines and regulations governing the limited instances in which it will use the polygraph. Again, I found little interest among private sector employers to engage in the kind of polygraph testing practiced by the Federal Government. Often these tests take 1 to 2 days and are followed by a detailed field investigation. I have yet to meet a private sector employer that utilizes similar procedures.

Second, S. 1904 does not apply to contractors for several agencies who are subject to intelligence and counterintelligence activities. Again, the regulations governing use of polygraphs by such employers are extremely stringent and, given the compelling governmental interest in national security, this limitation appears not only justified but highly appropriate.

Third, S. 1904 contains section 7(d) which provides that an employer may request an employee "* * * to submit to a polygraph test if the test is administered in connection with an ongoing investigation involving economic loss or injury to the employer's business, including theft, embezzlement, misappropriation or an act of unlawful industrial espionage or sabotage."

The committee's report makes it clear that the term economic loss or injury applies not only to instances where the employer can demonstrate a financial loss but also those instances, such as money laundering, which might actually result in a short-term gain to the employers.

Similarly, the report makes it clear that also included under this term would be instances such as theft from property managed by an employer. This language was added to address the fact that many crimes and situations may cause only indirect economic loss or injury. For example, a repairman at an apartment building might steal repeatedly from building tenants. An artful lawyer might argue that such theft would not cause direct economic loss or injury to the employer but to the tenant and thus would not be an event subject to the act. The committee report makes it clear that such theft would be covered, thus making it possible to avoid such an unintended anomaly.

Fourth, S. 1904 makes sure that the results of a polygraph examination are not the sole basis for an adverse employment action. As I noted before, I have yet to hear from any reputable polygraph expert that the results of a polygraph should be the only basis on which to decide an employee's fate. They all appear to agree that there should be some corroborating evidentiary basis before an action is taken. The legislation provides this requirement.

Fifth, S. 1904 addresses the issue of what happens when an employee refuses to take a polygraph requested by an employer in conjunction with section 7. According to section 8(b), an individual who refuses to take an exam is treated the same as one who did not pass. An employer may take an adverse employment action, including termination, if it has additional supporting evidence, the same evidentiary basis needed to give a polygraph. Consequently, an employer is not put in an adverse legal situation by requesting that an employee take a polygraph examination in accordance with the requirements of the bill and the employee refuses. Without this provision, the exemption would be a charade, of little or no use in the private sector.

Sixth, S. 1904 addresses the important issue of how to handle confessions or statements made during the examination. The bill makes it clear that an employer is free to act upon statements made before the examination or even during a test. The committee's review of the use of polygraph has provided numerous examples of individuals who have confessed to a variety of acts when confronted with the possibility or the reality of a polygraph examination. In my opinion, where such statements are made in the focused forum envisioned by the bill, that is in conjunction with an investigation of a specific economic loss or injury to an employer, action upon such statements is warranted. As a result, S. 1904 does not impinge upon such action by an employee.

Seventh, S. 1904 addresses the problem of lawyers to the degree that the problem of lawyers can be addressed under any one piece of legislation. The act makes it clear that while an employee has the right to obtain and consult with legal counsel before each phase of the test, his or attorney cannot be present in the room, during the actual examination. Some have argued that counsel should be present during the examination, but I do not understand how one could run a legitimate polygraph test with a lawyer in the room who is constantly disrupting the process. Again, S. 1904 strikes a reasonable and equitable balance between the competing interests involved.

Eighth, S. 1904 provides that, before a polygraph exam can be given, an employer must, among other things, do one of four things. It must file a report of the incident or activity with the appropriate law enforcement agency, the employer's insurer, the appropriate Government agency, or it must execute a statement. Under this fourth category, an employer must keep on file for three years a statement setting forth the evidentiary basis which justifies resorting to the use of a polygraph. This requirement is a protection not only for employees but for employers. They will now know what type of materials they need to retain to ensure compliance with the law.

I have been disturbed, Mr. President, because some opponents of the bill have been contacting members of this body asserting that the only way an employer can give a polygraph is, if it first contacts the police, a burden they find excessive. While such a burden may or may not be excessive, certainly drafting a memorandum cannot be called burdensome. As a lawyer familiar with existing Federal and State labor statutes, I worry about the wisdom of any employer who is not already retaining a written record of every adverse employment action.

Ninth, S. 1904 does establish several qualifications for examiners and guidelines for the giving of tests. In drafting these provisions, great reliance was placed upon the recommendations of the American Polygraph Association. While I recognize that this organization does not support S. 1904, they did provide the committee with several ideas on how to ensure competent examiners and accurate exams. As William Scheve, the president of the American Polygraph Association testified in 1985:

> We would suggest that if the Federal Government decides to regulate the administration of polygraph examinations, that it do so by establishing recommended standards and guidelines for the polygraph industry and by strongly encouraging the states to adopt them.
>
> A regulatory approach such as this would establish the training criteria that competent examiners consider to be essential for the proper administration of all polygraph examinations.
>
> Federal standards and guidelines could also address issues such as appropriate instrumentation, proper examination procedures, and the necessity for effective enforcement policies: The employers' use of polygraph examination results could also be addressed. We believe that by adopting these standards, coupled with our suggestions for continuing education and professional affiliation, citizens and employers alike would be assured that tests would be both fair and accurate.

The provisions found in section 8 (c) and (d) are based in larger part on the recommendations of the association.

Finally, S. 1904 requires that polygraph examiners be bonded. By doing so, the Mary Braxtons of this world will no longer be without recourse against the deplorable acts of incompetent polygraphers.

Looking over these comments, I hope my colleagues will agree that S. 1904 is a carefully crafted, effective solution to the use of polygraphs in the private sector. It deserves the support of this body, and I hope we will act on legislation in an expeditious manner.

I think this is important legislation. I hope we will have support for this bill on the floor and that we can pass this bill all the way through both Houses of Congress in its present form. This Senator will do everything he can to work toward that end.

Mr. COCHRAN. Mr. President, I rise to note for the record and to advise Senators that there were three of us in the committee who voted against reporting this bill to the Senate. Those reasons are stated in minority views that are included as a part of the committee report. This Senator did not actually write views that were included in the report, but I wish to express some concerns now to advise Senators that there are objections to this legislation.

As we were waiting on a quorum when we were taking up the bill and preparing to report it out, I made the mistake of reading the bill. That may be why I voted against it. I was attracted to one provision that just jumped out at me; it is on page 35 of the bill now on the desk of every Senator. It is entitled "Promulgation of Standards," and I will read it with the indulgence of the Senate:

The Secretary shall establish standards governing individuals who, as of the date of the enactment of this act, are qualified to conduct polygraph tests in accordance with applicable State law. Such standards shall not be satisfied merely because an individual has conducted a specific number of polygraph tests previously.

It strikes me that we are creating, by passing this bill, an authority at the Federal level for a Cabinet-level Secretary to actually promulgate standards on which States will have to base their licensing of polygraph examiners. If there is a different meaning, for this language, I hope the Senate will be advised.

What concerns me about this provision is that it marks the first time ever the Federal Government has attempted to legislate standards for a profession or vocation it has never regulated before. And there are many other vocations and areas of activity for which the Federal Government does not purport to establish standards for licensing.

I think immediately of the medical profession, where the life, safety, and health of individuals is very directly affected by the competence and ability of those providing medical care. Under our system of government the States have the power to prescribe standards and qualifications that must be met by those who seek to be licensed as medical doctors. This is not the responsibility of the Federal Government. And there are many, many other illustrations of that. It may be that the Federal Government ought to be more involved in some areas, but I do not think the case has yet been made. Certainly, in this area where there has never been any licensing to permit the Secretary of Labor to establish standards for polygraph examiners would be a very sharp departure from past practice and from the division of power between the State and Federal governments.

So I rise that question. I may have an amendment that I will offer later to deal with this question, to try to define exactly what power we are conferring on the Federal Government in the area of licensing or standard setting, and to see whether or not the Senate agrees with a change in this section.

I sympathize with the views expressed by the managers of the bill that we certainly do not want to see in our country in abuse of the rights of individual workers or prospective employees in any way by employers in the administrating of polygraph examinations as a condition to employment. I do think, however, that in some industries there are legitimate concerns about the honesty, integrity, and physical condition of prospective employees. Employers have the right to inquire and to satisfy themselves that applicants for those jobs are fit and well-suited for employment in those industries.

I think for instance about the situation where employees may be called upon to handle large sums of currency. If in their background there are examples of behavior that show that a prospective employee is not trustworthy, that employer has a right to find that out. On the other hand, if a polygraph examiner is qualified for the job under licensing of the State, then in my judgment there should not be a Federal law to interfere.

I hope that we look very carefully at this legislation before we rush to passage or rush to vote. I know the distinguished Senator from Indiana, Senator QUAYLE, has expressed opposition in the committee to the bill and has amendments that he wants considered. There are other Senators who also contemplate offering amendments.

I appreciate very much having this opportunity to alert the Senate to the fact that there is opposition to this legislation, to state why there is opposition from this Senator at this point, and to express the hope that we will consider carefully suggestions for change before we enact the bill.

Mr. KENNEDY. Mr. President, just briefly I welcome the points that have been made by the Senator from Mississippi. He has made these comments during the course of our own consideration of the legislation.

We, over the course of our hearings, found that there were a number of instances where States did not have any kind of regulation or prohibition in terms or licensing of various of the polygraph personnel, and that many of those companies would actually use, in many instances, the kinds of abuses that would fall into the type of abuses that were described earlier, and then assigned those personnel to the various States where there were prohibitions against any kind of the intrusive aspects of polygraph that has been described.

So at the present time we find very substantial abuses in circumventing State regulations and we had impressive testimony along those lines.

Given the dramatic growth of the use of polygraph across the country and the abuses which have been so evident, it seemed like the type of actions that we have recommended would be legitimate and be worthwhile.

I want to point out that we do not preempt those States that have effective laws. We respect those. But I would mention to the Senator from Mississippi that it was only about a year ago in the omnibus drug bill that Congress voted overwhelmingly to grant the Secretary of Transportation power to review the States' licensing of truckdrivers, not that that necessarily should as one instance be used as a blank predicate for the support of this legislation. But recognized were the dangers that were presented, particularly in many States that did not have the kind of review in terms of the safety and the training various truckdrivers—in fact, they were using the interstate system—and that these matters were in effect a matter of interstate commerce; that providing that kind of limited review by the Department of Secretary of Transportation was warranted. We have a number of other areas as well.

I respect the arguments that have been made by the Senator from Mississippi, but I do think in light of the overwhelming evidence during the course of our hearings, talking about the circumvention of various State laws and the growth of the various uses of the polygraphs, that this activity is warranted.

Mr. President, as I say, we are prepared to deal with any of the various amendments. I am hopeful we will be able to address those because we are prepared to deal with those now.

● Mr. SIMON. Mr. President, I am pleased today to be counted among those in support of the Polygraph Protection Act of 1987.

Twenty-one States have either banned or restricted the use of lie detectors in the workplace, but the number of Americans who must submit to these tests continues to grow. Working men and women in the private sector are subjected to more than 2 million lie detector tests every year—4 times the number given 10 years ago. State lie detector prohibitions have proven inherently inadequate.

The truth is that polygraph tests cannot accurately distinguish truthful statements from lies. The Congressional Office of Technology Assessment has reviewed field studies of polygraph validity and has found that honest people are more likely to fail polygraph tests than dishonest people. The tragedy is that at least 200,000 Americans are wrongfully denied employment opportunities every year—not because of their work records, but rather because employers rely on inaccurate lie detector tests. Honest workers would be better off if their employ-

ers made these personnel decisions by simply flipping a coin.

Certainly American workers must be afforded the same protection from polygraph tests which is routinely granted to indicted suspects in criminal proceedings. These people cannot be forced to take polygraph tests, and even the Justice Department opposes the use of polygraph examination results in criminal trials as evidence of guilt or innocence. Yet many employees and job applicants can be forced to take lie detector tests for any reason whatsoever.

Mr. President, this bill will prohibit the use of preemployment polygraph tests—the area of greatest abuse of applicants' rights by potential employers. It does not, however, prohibit the use of polygraph tests completely. If a loss report has been filed with a Federal agency or an insurance company, a detailed written statement has been made of the loss by an employer, or the police and a complete investigation has been made leading to certain, specified suspects, the polygraph may be used under certain restrictive circumstances. This, Mr. President, is certainly an equitable procedure for dealing with polygraph testing. We must address the problem of abuse here, and I would hope that many of my colleagues will agree with me and vote for this bill.●

Mr. THURMOND. Mr. President, I rise today to offer an amendment to this bill to require rotating health warning labels for all alcoholic beverage containers. This is the same legislation I introduced earlier this year along with my distinguished colleagues Senator METZENBAUM, Senator HARKIN, and Senator EVANS.

Last year, I took the opportunity to inform my colleagues of the continuing lack of responsibility on the part of the alcohol beverage industry regarding their advertising practices. Such irresponsibility demands congressional action to counter the adverse effect these practices are having on the Nation.

Mr. President, the Public Health Service recently completed a study on the potential educational effects of health warning labels and concluded that labels can be effective in increasing consumer knowledge and can have an impact on consumer behavior, particularly in combination with other educational initiatives.

Mr. President, health warning labels are an important step to educate the consumer on the potential hazards of alcohol consumption.

The warnings in this measure, which would be placed conspicuously on the beverage containers, would read as follows:

WARNING: The Surgeon General has determined that the consumption of this product, which contains alcohol, during pregnancy can cause mental retardation and other birth defects.

WARNING: Drinking this product, which contains alcohol, impairs your ability to drive a car or operate machinery.

WARNING: This product contains alcohol and is particularly hazardous in combination with some drugs.

WARNING: The consumption of this product, which contains alcohol, can increase the risk of developing hypertension, liver disease and cancer.

WARNING: Alcohol is a drug and may be addictive.

Mr. President, alcoholism and alcohol abuse are recognized as one of our Nation's most serious problems.

To illustrate the extent of alcohol abuse, here are a few relevant examples:

First. The National Institute on Alcohol Abuse and Alcoholism [NIAAA] says that alcohol costs the American economy nearly $120 billion per year in increased medical expenses and decreased productivity.

Second. The NIAAA estimated that 18.3 million Americans are "heavy drinkers" which is defined as consuming more than 14 drinks per week.

Third. In 1985, over 12 million American adults had one or more symptoms of alcoholism. This represents an increase of 8.2 percent from 1980.

Fourth. Since 1981, the Surgeon General has officially advised women to abstain from drinking during pregnancy. Despite this warning, fetal alcohol syndrome is the third leading cause of birth defects with accompanying mental retardation. It is the only preventable birth defect among the top three. However, a 1985 government survey revealed that only 57 percent of Americans had even heard of fetal alcohol syndrome.

Fifth. A 1987 HHS report to Congress entitled "Alcohol and Health" cites that nearly one-half of all accidental deaths, I repeat, one-half of all accidental deaths—suicides and homicides are alcohol related. Nearly half of the convicted jail inmates were under the influence of alcohol when they committed the crime.

Sixth. Alcohol related traffic accidents claim over 23,987 lives each year in the United States.

Seventh. Among teenagers, alcohol abuse has reached epidemic proportions. According to the 1987 HHS report, an estimated 30 percent or 4.6 million adolescents experience negative consequences of alcohol use, such as poor school performance, trouble with parents, or trouble with the law.

Eighth. According to recent statistics, alcohol remains the most widely used drug among American youth.

For many years I have firmly believed in the need for warning labels on alcoholic beverages, and I have introduced this type of legislation before. In fact, I cannot imagine any argument against this legislation which I have not previously heard. More importantly, what I said in support of such legislation in 1979 and in 1981 is just as true today:

If such a warning label deters a potential abuser of alcohol from taking a drink, or prevents a casual drinker from climbing behind the wheel of a car when he has had "one too many", or prevents a pregnant woman from potentially causing harm to her unborn child, then this legislation will be effective and worthwhile.

Mr. President, I will never forget the letter I received from Mr. Ben Robinson of Alexandria, VA, regarding alcohol labeling legislation. I want to read you a portion of that letter because it briefly, and very persuasively, explains the importance of this bill.

Such a law is very much needed! It probably would not deter veteran drinkers, but for the young still unaddicted it would cause them to think twice before drinking. I speak from sad experience. Just a little over a year ago, August 12, 1984, our family was shocked with the news that our 22 year old son was dead. From information that we received later in bits and pieces we learned that while camping with two other boys near a fishing pond in West Virginia, they all drank heavily of hard alcohol. Bruce, our son, passed out and never awakened.

The Certificate of Death reads for the cause "acute ethyl alcohol intoxication, and extensive aspiration of stomach contents into tracheobronchial tree." Bruce was a novice to whiskey drinking. He did drink beer in moderation, but I had never known him to drink whiskey—and he and I were close.

I cannot help but think that warning labels carefully written as to consequences would prevent alcohol abuse and deaths among young people.

Within a few weeks after Bruce's death, Paul Harvey in his newscast said alcoholic deaths among the young are not uncommon. He mentioned a young girl who had drunk to excess and gone into a coma. He said that youth are very susceptible to alcohol poisoning and this is especially true when body temperature is low . . . . I wish you success and if there is something I can do to help, let me know.

Mr. President, this legislation will serve to provide individuals with the knowledge necessary to make an informed decision on whether or not to consume alcoholic beverages. Similar to cigarette warning labels, these labels do not create any legal restriction or penalty to those who do not heed the warnings. They merely provide cautionary notice that consumption of the product may entail serious consequences in certain situations.

Mr. President, I have received several letters from organizations endorsing health warning labels on alcoholic beverages. These organizations include: the American Medical Association; the American Academy of Pediatrics; the National Council of Alcoholism; the Center for the Science in the Public Interest; the General Association of General Baptists; Mothers Against Drunk Driving; the American Council on Alcohol Problems; the National Rainbow Coalition; the National PTA; the Christian Life Commission; the Association for Rretarded Citizens; the National Women's Christian Temperance Union; and the American Medical Society on Alcoholism & Other Drug Dependencies.

Mr. President, the Senate passed alcohol warning labels legislation in 1979. I repeat, this Senate passed alcohol warning labels legislation in 1979. I urge my colleagues to support the

passage of this vitally important legislation and reaffirm the commitment of this body to protecting the health of the American people.

AMENDMENT NO. 1472

(Purpose: To require a health warning on containers of alcoholic beverages)

Mr. THURMOND. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from South Carolina [Mr. THURMOND] proposes an amendment numbered 1472.

Mr. THURMOND. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Hearing no objection, it is so ordered.

The amendment is as follows:

At the appropriate place, insert the following:

SEC. . (a) Congress finds that—

(1) the most abused drug in America is alcohol;

(2) alcohol use costs the American economy nearly $120,000,000,000 per year, including increased medical expenses and decreased productivity;

(3) alcohol related traffic accidents claim over 23,000 lives each year in the United States;

(4) over 12,000,000 American adults have one or more symptoms of alcoholism, representing an 8.2 percent increase in problem drinking since 1980;

(5) since 1981, the Surgeon General has officially advised women to abstain from drinking during pregnancy, and despite this warning, fetal alcohol syndrome is the third leading cause of birth defects with accompanying mental retardation;

(6) fetal alcohol syndrome is the only preventable birth defect among the top three types of birth defects in the United States, nevertheless, recent surveys reveal that only 57 percent of Americans have heard of fetal alcohol syndrome;

(7) nearly one-half of all accidental deaths, suicides, and homicides are alcohol related, and nearly half of the convicted jail inmates were under the influence of alcohol when they committed the crime;

(8) among teenagers, alcohol abuse has reached epidemic proportions and an estimated 30 percent or 4,600,000 adolescents experience the negative consequences of alcohol use (such as poor school performance, trouble with parents, or trouble with the law);

(9) in 1986, alcohol remained the most widely used drug among American youth;

(10) the Public Health Service has recently completed a study on the potential educational effects of health warning labels on alcoholic beverages and concluded that such labels can be effective in increasing consumer knowledge and can have an impact on consumer behavior, particularly in combination with other educational initiatives;

(11) the statistics cited in the preceding paragraphs indicate that many Americans are not aware of the adverse effects that the consumption of alcoholic beverages may have on health;

(12) it is necessary to undertake a serious national effort to educate the American people concerning the serious consequences of the consumption of alcoholic beverages; and

(13) warning labels on the containers of alcoholic beverages concerning the effects on the health of individuals resulting from the consumption of such beverages would assist in providing such education.

(b) Title V of the Public Health Service Act is amended by adding at the end thereof the following new part:

"PART D—PUBLIC AWARENESS CONCERNING THE HEALTH EFFECTS OF ALCOHOLIC BEVERAGE CONSUMPTION

"SEC. 550. PUBLIC AWARENESS.

"(a) DEFINITIONS.—For purposes of this section—

"(1) ALCOHOLIC BEVERAGE.—The term 'alcoholic beverage' includes distilled spirits, wine, any drink in liquid form containing wine to which is added concentrated juice or flavoring material and intended for human consumption, and malt beverages.

"(2) COMMERCE.—The term 'commerce' has the same meaning as in section 3(2) of the Federal Cigarette Labeling and Advertising Act.

"(3) CONTAINER.—The term 'container' means any container, irrespective of the material from which made, used in the sale of any alcoholic beverage.

"(4) DISTILLED SPIRITS.—The term 'distilled spirits' means any ethyl alcohol, hydrated oxide of ethyl, spirits of wine, whiskey, rum, brandy, gin, and other distilled spirits, including all dilutions and mixtures thereof, for nonindustrial use.

"(5) MALT BEVERAGE.—The term 'malt beverage' means a beverage made by the alcoholic fermentation of an infusion or decoction, or combination of both, in potable brewing water, of malted barley with hops, or their parts, or their products, and with or without other malted cereals, and with or without the addition of unmalted or prepared cereals, other carbohydrates or products prepared therefrom, and with or without the addition of carbon dioxide, and with or without other wholesome products suitable for human food consumption.

"(6) PERSON.—The term 'person' has the same meaning as in section 3(5) of such Act.

"(7) SALE AND DISTRIBUTION.—The terms 'sale' and 'distribution' include sampling or any other distribution not for sale.

"(8) UNITED STATES.—The term 'United States' has the same meaning as in section 3(3) of such Act.

"(9) WINE.—The term 'wine' has the same meaning as in section 17(a)(6) of the Federal Alcohol Administration Act (27 U.S.C. 211(a)(6)).

"(b) GENERAL RULE.—It shall be unlawful for any person to manufacture, import, distribute, sell, ship, package or deliver for sale, distribution, or shipment, or otherwise introduce in commerce, in the United States, any alcoholic beverage during a calendar year unless the container of such beverage has a label bearing one of the following statements:

"(1) 'WARNING: THE SURGEON GENERAL HAS DETERMINED THAT THE CONSUMPTION OF THIS PRODUCT, WHICH CONTAINS ALCOHOL, DURING PREGNANCY CAN CAUSE MENTAL RETARDATION AND OTHER BIRTH DEFECTS.

"(2) 'WARNING: DRINKING THIS PRODUCT, WHICH CONTAINS ALCOHOL, IMPAIRS YOUR ABILITY TO DRIVE A CAR OR OPERATE MACHINERY.

"(3) 'WARNING: THIS PRODUCT CONTAINS ALCOHOL AND IS PARTICULARLY HAZARDOUS IN COMBINATION WITH SOME DRUGS.

"(4) 'WARNING: THE CONSUMPTION OF THIS PRODUCT, WHICH CONTAINS ALCOHOL, CAN INCREASE THE RISK OF DEVELOPING HYPERTENSION, LIVER DISEASE, AND CANCER.

"(5) 'WARNING: ALCOHOL IS A DRUG AND MAY BE ADDICTIVE.'.

"(c) LOCATION OF LABEL.—The label required by subsection (a) shall be located in a conspicuous and prominent place on the container of a beverage to which such subsection applies. The statement required by such subsection shall appear in conspicuous and legible type in contrast by typography, layout, or color with other printed matter on such container.

"(d) REQUIREMENTS.—Each statement required by subsection (a) shall—

"(1) be randomly displayed by a manufacturer, packager, or importer of an alcoholic beverage in each calendar year in as equal a number of times as is possible on each brand of the beverage; and

"(2) be randomly distributed in all parts of the United States in which such brand is marketed.

"(e) BUREAU OF ALCOHOL TOBACCO AND FIREARMS.—The Bureau of Alcohol Tobacco and Firearms shall—

"(1) have the power to—

"(A) ensure the enforcement of the provisions of this section; and

"(B) issue regulations to carry out this section; and

"(2) consult and coordinate the health awareness efforts of the labeling requirements of this section with the Secretary of Health and Human Services.

"(f) VIOLATIONS.—Any person who violates the provisions of this section shall be guilty of a misdemeanor and shall on conviction thereof be subject to a fine of not more than $10,000.

"(g) JURISDICTION.—The several district courts of the United States are invested with jurisdiction, for cause shown, to prevent and restrain violations of this section upon the application of the Attorney General of the United States acting through the several United States attorneys in their several districts.

"(h) EXEMPTIONS.—Alcoholic beverages manufactured, imported, distributed, sold, shipped, packaged, or delivered for export from the United States, or for delivery to a vessel or aircraft, as supplies, for consumption beyond the jurisdiction of the internal revenue laws of the United States shall be exempt from the requirements of this section, but such exemptions shall not apply to alcoholic beverages manufactured, imported, distributed, sold, shipped, or packaged or delivered for sale, distribution, or shipment to members or units of the Armed Forces of the United States located outside of the United States.

"(i) LIABILITY.—Nothing in this section shall be construed to relieve any person from any liability under Federal or State law to any other person.".

(c) The amendment made by this section shall become effective 6 months after the date of its enactment.

Mr. THURMOND. Mr. President, I just listed a few of the organizations that support the use of warning labels on alcoholic beverages. I did not list all of them.

Other organizations that favor warning labels on alcoholic beverages are the American Academy of Pediatrics; the American Medical Student Association; the American Youth Works Center; the American College of Preventive Medicine; the Consumer Federation of America; Children's Foundation; the American Health and Temperance Society; Consumer Affairs

Committee of Americans for Democratic Action; and the American Association of Health Education.

Those, I believe, are in addition to the ones I mentioned a few moments ago.

Mr. President, I wish to read a few letters to show the solid backing for this amendment.

I believe the distinguished manager of this bill on the floor was one of those who backed this amendment. I want to thank him, and I hope he will back it again.

Mr. President, here is a letter to me:

On behalf of the 160,000 members of the Association for Retarded Citizens of the United States, I wish to commend you and the other Senate co-sponsors for your introduction of legislation to mandate health and safety warning labels on all alcoholic beverages. Our members, the majority of whom are parents of persons with mental retardation, have been seeking such legislation for some time. As you are keenly aware, fetal alcohol syndrome is a leading and preventable cause of mental retardation.

We are particularly pleased that your proposed bill will require one of the warning labels to be affixed to beer, wine and distilled spirits containers to state that consumption of alochol during pregnancy can cause mental retardation. Such a label, providing high exposure of this problem to the general public, is expected to be extremely helpful in preventing mental retardation caused by fetal alcohol syndrome.

The ARC strongly endorses this legislation and urges its prompt enactment.

Sincerely yours,

V.K. "WARREN" TASHJIAN,
President.

Mr. President, if this bill is adopted, if it did nothing more than prevent mental retardation, it would be thoroughly worthwhile. That is what this organization, the Association of Retarded Citizens, feels about this bill.

Now, Mr. President, I want to read a letter from the National Parents and Teachers Association, dated February 1, 1988.

DEAR SENATOR THURMOND: The National PTA would like to extend our support to your efforts in enacting legislation that would require warning labels on alcoholic beverages.

As you know, alcohol is the most widely used and abused drug in our society. Yet, a 1983 National Weekly Reader Survey on Drugs and Alcohol noted that only 42 percent of fourth graders realized that alcohol was a drug compared to 81 percent who considered marijuana a drug, and the percentage of students recognizing alcohol as a drug decreased with age, to 28 percent, in the upper grades.

The public is not sufficiently aware of the danger of alcohol abuse or the short and long term effects of alcohol on their physical and mental health. Alcohol contributes to several fatal diseases, including cardiac myopathy, hypertension and stroke, pneumonia, several types of cancer and liver disease. As a poison, alcohol is second only to carbon monoxide as the substance directly responsible for the most unintentional poisoning deaths in the U.S. In addition, alcohol-related highway deaths are the number one killer of 15-24 year olds. In 1985, 52 percent of the 43,800 highway fatalities were alcohol related.

Mr. President, I want to pause to call attention to that. "In 1985, 52 percent of the 43,800 highway fatalities were alcohol related."

Health warning labels will serve important informational and educational functions. Labeling of all alcoholic beverages will highlight specific information about alcohol use and health effects. The glamorization and normalization of drinking promoted yearly, in a 1.3 billion advertising campaign, will be countered through warning labels on all alcoholic beverages. And finally, warning labels with reinforced school-based alcohol prevention and education programs.

We applaud your tireless effort to help educate the public to alcohol related problems. We hope that this year the health and safety of our nation's citizens takes priority over special interest concerns, and that legislation mandating health warning labels on alcoholic beverage containers be enacted.

Sincerely,

MILLIE WATERMAN,
Vice-President for Legislative Activity.

Mr. President, I have a letter here from the National Council on Alcoholism, addressed to me, dated January 27, 1988.

DEAR SENATOR THURMOND: On behalf of the National Council on Alcoholism, I would like to express my strong endorsement of your proposed legislation mandating health and safety warning labels on all alcoholic beverages.

If enacted, this legislation will provide alcohol consumers with concrete information about the association of alcohol consumption with health and safety risks ranging from alcohol-related birth defects and alcohol's contribution to liver disease, hypertension and cancer; to the impairment of driving ability and the danger of combining alcohol with other drugs. The label which identifies alcohol as a drug with addictive potential will help to mitigate against the alarming equation of alcohol with soft drinks and juices so frequently featured in alcohol advertising in both broadcast and print media.

Education has frequently been cited as a key ingredient in any comprehensive strategy to address alcoholism and alcohol-related problems in the nation. Clear and simple labels placed on every container of beverage alcohol every day of the year will keep educational messages about alcohol's effects constantly before the public eye. Public service announcements on radio and television and educational campaigns to combat alcoholism and related problems are of necessity, time-limited. The labeling of alcoholic beverage containers will institutionalize important public health information and cannot help but greatly enhance the public's knowledge regarding health and safety risks attendant on alcohol use.

In a democratic society, consumers have a right to know about the risks associated with the consumption of any given legal product. This information is critical if individuals are to make informed decisions about their use or non-use of alcohol. Alcoholic beverages have long been held harmless from a number of consumer information strategies. In fact, alcohol advertising which glamorizes drinking continues to be the major and most powerful source of information Americans receive about alcohol. Your proposed legislation makes a major contribution to alcohol education for American consumers.

NCA has been on record in support of health and safety warning labels on alcoholic beverages since 1982. In our view, the utilization of this simple, cost-effective and well precedented educational vehicle is long overdue. We have appreciated your leadership on this important alcohol policy measure throughout the last decade. We pledge our unqualified support for all your efforts to make health and safety warning labels on all alcoholic beverages federal public policy during the second session of the 100th Congress.

Please don't hesitate to call on the National Council on alcoholism and its 200 local and state affiliates throughout the nation for our assistance in helping you to realize this goal.

Sincerely,

THOMAS V. SEESSEL,
President.

Mr. President, I have letters and I will take more of them up later. As I say, I have letters from the American Academy of Pediatrics and various other organizations, which all endorse these labels.

What harm can there be to merely put on a container a label of the kind that I described, that warns pregnant women that it is dangerous to take alcohol because it would damage the babies and make many of them suffer from mental retardation? What is the harm in putting on a warning? People do not have to follow it, but why not warn the public? Why inform the public of the dangers?

This is for the health of the Nation. I am very pleased that not only the majority manager of this bill supported this bill but also the minority manager, my distinguished friend, the ranking member of the committee, favors warning labels.

Now, some people say, "I favor them but I do not favor them on this bill." That is no excuse. You may never have another opportunity if you do not put it on this bill. We ought to be putting it on many bills in this Senate. If you favor warning labels, now is the time to show your colors. Now is the time to let the public know you believe in warning labels. It is for the good of the public. That is the only reason I offer this amendment. I am interested in trying to help warn mothers not to drink alcohol while they are pregnant, to warn of the dangers of alcohol causing automobile wrecks, causing homicides, causing suicides.

Mr. President, this is a very important amendment, and I hope the managers of this bill will accept it. They both have favored labeling heretofore, and I hope they will accept it on this bill and not say put it off to another time or bring it up separately.

Now is the time to stand by this bill if you believe in it. Now is the time to show your colors. Now is the time to let the people of this Nation know that it is detrimental to pregnant women and detrimental in the other ways I have said. All this bill does is require a label. It does not prohibit anybody from doing anything. It merely warns the public. I hope the managers will accept this amendment,

and I will be pleased to hear from them right now.

(Mr. ROCKEFELLER assumed the chair.)

Mr. HATCH. Mr. President, it is intriguing to me that my distinguished colleague, who really has done a great job on warning labels as a member of the Labor and Human Resources Committee, would bring this matter up at this time on this bill, especially since tomorrow we have a number of health bills coming up in the Labor and Human Resources Committee, among which is the alcohol, drug abuse, and mental health bill, a perfect bill, a perfect vehicle, one where this amendment would be germane and one I would support without question, as I have in the past. The appropriate thing for him to do would be to bring it up tomorrow and put it on the alcohol, drug abuse, and mental health bill. Frankly, we might support it.

But there is another aspect of this, too, which I would like to call to my friend's attention. That is that there is not the same consensus for this particular bill as there might be if we sat down and really worked to get a consensus on warning labels which include warnings about the abuse of alcohol, because these labels do not do that. I think we could build a consensus with which we would pass a bill that would once and for all warn everybody in America about the dangerous use and the abuse of alcohol.

Unfortunately, I do not believe the bill the Senator is using as an amendment on the polygraph bill, a totally nongermane amendment, I might add, that really has no relationship to what we are trying to do with polygraph, would pass anyway. But I think we can work the language out so that we can pass it and do everybody in America a great deal of good.

Since 1977, I have supported Senator THURMOND's legislative efforts to require alcohol warning labels. I think Senator THURMOND has been a champion in educating Americans about the potential risks of alcohol abuse. However, I would like to suggest to my dear friend and colleague from South Carolina that he should consider offering this legislation as an amendment on the alcohol, drug abuse and mental health bill tomorrow and that would give it much more support than he will get here today, at least in my opinion.

Furthermore, I think there is an alcohol warning labeling bill that could be developed and passed by Congress. I do not think this one will be passed. There are many people, who are sincerely devoted to coming up with appropriate alcohol warning labels in the form of legislation, who perhaps would not vote for this bill. However, what Senator THURMOND has put before us is an important beginning. It can be improved.

For example, we should model this legislation after the recommendations by the Department of Health and Human Services. During last year's antidrug absue legislative effort we asked the Department of Health and Human Services to assess the potential educational benefits of alcohol warning label legislation.

In summary, they found, one, health warning labels can have an impact upon the consumer if they understand the labels and understand the risks the label is warning about. Consumers tend to ignore label information which they feel is not useful to them or is not important to their goals.

Second. Health warning labels can have an impact upon the consumer if the labels are designed effectively.

Third. Health warning labels may not have an effect on consumer behavior.

Fourth. Warning label legislation should be done after a public education effort designed to increase consumer knowledge of the health hazards associated with alcohol consumption.

That fourth one really makes a very good argument against bringing it up as a nongermane amendment to a bill that has no relationship to it.

With those goals in mind, I believe we can sit down with the distinguished Senator from South Carolina—and I am dedicated to doing that; I believe in warning labels as much as he does—and fashion a warning label bill accompanied by an educational campaign that will educate consumers about the health hazards of alcohol abuse.

I believe we should force the industry to work with us on the bill, and I believe we can get help from the industry. They are concerned about the abuse of alcohol, and some of them have acted very responsibly as a result of the hearings that I held when I was chairman of the Labor and Human Resources Committee, and as a result of some of the great work that the distinguished Senator from South Carolina has done, they are ready to do so. They have extended their hands toward us to talk. So let us do it. Let us not do it this way.

The managing editor of the Wine Spectator recently wrote, "We should adopt a forward-looking strategy that recognizes legitimate health concerns in America and proposes creative solutions to the warning label legislative effort which could put wine producers in a cosmic light and disarm the critics."

People are interested in discussing warning label legislation, so let us bring them all to the table with other interested groups including the National Council on Alcoholism, the National PTA, and the American Medical Association. Let us make them work with us and get an alcohol warning label bill signed into law. I do not think this is the vehicle, nor is this the amendment which will work.

Finally, I do not want to prolong this because I think everybody in this body and many people throughout the country know the fights that I have led to put warning labels on alcoholic beverages and on tobacco substances as well. We have the tobacco labels in effect. They are working. They are doing some good. I led the fight for those, among others. I will lead the fight, along with the distinguished Senator from South Carolina, on alcohol warning legislation as well. But this is not the way to do it. I am suggesting to you right now, Mr. President, that this is a vote on procedure, not substance.

Now, I would be hesitant about tabling a germane amendment, if this were a germane amendment, because there should be debate on this bill, but this issue is not germane. This is not the vehicle for those of us who really want to solve this problem. I do not think, the way it is written, it is passable either.

So I have to conclude that is the only reason for bringing it up at this time. You will have the perfect vehicle tomorrow. You have a committee that is acceptable to listening to alcohol warning legislation. I think they would allow it to be put in good form on the alcohol, drug abuse, and mental health bill, if not in committee certainly on the floor, and that bill is going to come to the floor without much hesitation. I think that is the appropriate way to do it.

Everybody knows I do not want to vote against alcohol warning legislation. Everybody knows that. Everybody knows my position on it. They know that I do not drink, and they know that I am concerned about the youth of this country. They know I am concerned about people who are uneducated in these areas. They know I am concerned about the abuse of alcohol. They know that I know that it is one of the biggest drug abuse aspects in our country today.

Frankly, this is not the bill to put it on, and we are going to have to move to table. Before we do, I know there are others who would like to speak on this, and certainly we want to give them adequate time to do so also.

I want to tell my dear colleague how much I respect him. There is nobody in this body for whom I have greater or more deep respect than Senator THURMOND. I hope he will withdraw this amendment, and do it tomorrow with my support in committee, do it properly on the bill where it will go through the Congress and be made into the law; work with us to get language that I know will be acceptable to everybody.

Mr. THURMOND. Mr. President, will the Senator yield?

Mr. HATCH. I am happy to yield.

Mr. THURMOND. Mr. President, that sounds good.

Mr. THURMOND. But it is not practical.

Mr. HATCH. It is practical.

Mr. THURMOND. Here is why. The bill, the Alcohol, Drug Abuse and

Mental Health Bill, is similar to the bill last year that we put it on; similar bill, brought it to the Senate and we never could get it up in the Senate. Is the Senator asking to go through that same procedure when we could not get it up? The bill is up. We will have a chance to vote on it. Last year we brought up this bill and we never did get it up. So it amounted to nothing.

Mr. HATCH. Let me answer the Senator. That is true because it is this language, and there is not a consensus for this language. I will vote for this language in committee on the ADAMH bill which both the distinguished Senator from Massachusetts and I did last year. But we know that this language is not acceptable.

Mr. THURMOND. Offer amendments to amend it.

Mr. HATCH. If I could just answer the distinguished Senator, I believe. If we will sit down together we can come up with consensus language that the Senator from South Carolina can lead the fight for that will be very acceptable to him, that would not only be added to the ADAMH bill but would pass the whole Congress. I believe we could do it, if it is right so it is appropriate.

Mr. THURMOND. I suggest we go on with the bill here. I will sit down with the Senator tonight and work out these, if these warnings are not all right. Then we can offer them tomorrow.

Mr. HATCH. Let us work it out. But let us not offer it on this bill.

Mr. THURMOND. I know the Senator does not want them on this bill. He does not want this bill touched.

Mr. HATCH. That is right.

Mr. THURMOND. How are we ever going to get these warnings put on if we do not put them on the bill here in the Senate? We tried it in committee, and the Senator never could get his bill up. All last year we tried to get this bill up and had warnings in it. Alcohol interests were for it, and we were not able to get it up.

Mr. HATCH. If I can answer the distinguished Senator, the reason we could not, one of the principal reasons was because of this particular language. I happen to support this language in committee. I did support it. As a matter of fact, I am for this language. But I think it can be made better, and I think we can get it so we have a consensus, and even the industry would probably consent to it. If they will not, at least they know they are going to take a beating on the floor of both Houses of Congress.

I think this is the way to do it. Let us do it through the appropriate vehicles. Let us not do it on something like that which has no relationship to this.

Mr. THURMOND. Senator, you know amendments are offered all the time here that have no relation to other parts of the bill. It is the only way to get it through. In 1984 we passed the finest omnibus crime bill in the history of this Nation. How did we do it? We had to amend appropriations bill that came from the House. We sent this omnibus bill to the House and they never would act on it. We would not have passed the omnibus crime bill embodying so many good provisions if we had not amended the approporiation bill and put it on that. That is the only way we get it on there.

Mr. HATCH. I was part of that process.

Mr. THURMOND. I commend the Senator for that. I want to cooperate. I want to commend the Senator for this.

Mr. HATCH. I am always happy to be commended by the distinguished Senator from South Carolina. The problem with this is we know that this amendment on this bill will not help this bill to pass. We also know it did not help the ADAMH bill last year. We also know that if we can sit down, work on language, come up with language to do just as much as this language, maybe even more as far as warning the American people, and Americans who partake of alcoholic beverages, and given appropriate warnings, that will pass. That is a worthwhile endeavor.

Under those circumstances I would have no compunction about moving to table the Senator's amendment. Under those circumstances, with the added assurance that I am going to help him in every way I can to get appropriate warning label language passed, I will but not on this bill because this bill is a different bill. It has no relationship to that. I agree. We can add nongermane amendments to any bill if we want to. But I think I have made a pretty good case as to why I have to in particular move to table this particular bill. I will withhold that.

Mr. THURMOND. Will the Senator yield?

Mr. HATCH. Yes.

Mr. THURMOND. I want to remind the Senator that last year when we brought this bill with the labels in to the floor we never could get them to take up that bill until we took the labels out. They made us take the labels out. the Senator had the same thing again. This bill is up now. If we include in here, it will go to conference, it will be in conference. At least we can work it out.

The distinguished Senator from Massachusetts supports this bill, and supports these amendments. I commend him. What is the objection to putting them on this bill here now? Let us go to conference and see if we cannot work something out. I do not believe we are going to get alcohol warning labels on a bill that just provides for that alone. You have to hook it onto something else, and the alcohol interests will fight it to a finish. They did it last year.

And we have to put it on something else. This is a good bill to put it on.

Mr. HATCH. I will make another offer to the distinguished Senator. This is not a good bill to put it on. As much as I am for alcohol warning labels legislation, I am personally not going to let it go on this bill if I can help it. If the Senator wins, that will be fine on the vote. But let me say this. Should the Senator not win on this vote, if he persists on continuing, then I will do everything in my power to help him add appropriate legislation. We will work with him to change the language so it can be acceptable, so it can go through both Houses, and so it will pass. But I will do everything in my power as I think I am known to do to help him add it to any other appropriate bill that it could be added to.

Let me just add this. I think this is important. I believe that the Senator is not adequate in his statement that the bill came up last year, and they had to script language out. The bill did not come up last year. We did not script the language out. The reason it did not come up was because the language was in and we could not pass it. They were not going to waste the time on the floor to pass it, to try, when they knew there would be objections to this language. I think that is an accurate statement.

Mr. THURMOND. My recollection is we had to take out the warning labels to pass the bill.

Mr. HATCH. That is not true.

Mr. THURMOND. If I am in error I will be glad to be corrected.

Mr. HATCH. My understanding is that is not correct. Whether it is or is not, the Senator made by case. That is the warning labels as drafted were the reason the bill did not pass.

What I am offering is this, and I would like my colleague to consider withdrawing this amendment on this basis or otherwise I am forced to move to table. I am offering to do everything in my power to sit down with him, with my staff, his staff and others, and come up with legislation that I think will pass this year on the floor of both Houses of Congress, or at least we will have a much better chance to pass it than that.

I think it will pass. If the Senator will work with me on that, we will both be proud at the end of the year to have very effective alcohol warning legislation. If, for instance, the Senator persists with this amendment, and we have to move to table, then maybe the tabling will be granted. If it is granted, then the Senator, I think, has lost on his language.

I would prefer to work it out. I think we can work it out. We can work on something that is more germane as a bill, that is more germane than this particular bill. But that is all I have to say about it. If the Senator persists in presenting this amendment, we are going to have to move to table it. It is that simple.

Mr. THURMOND. I just want to say, Mr. President, for year after year these groups have been fighting to help the young people, and older

people, too, defend against the dangers of alcohol. The National Council on Alcoholism has worked strenuously for years. The Center for Science in the public interest has worked for the public good. The American Medical Society on Alcoholism and other drug dependency groups have worked for years. The American Academy of Pediatricians; what is pediatrics? A doctor of pediatrics is one who treats little children. These doctors nationwide treat little children, and are advocating these warning labels. They put people on notice. It does not bind people. It puts them on notice that it is dangerous.

The American Medical Association—that is the doctors of America—favor this bill. They favor this amendment. For years they favored it. Are we just going to continue to ignore it because the alcohol interests come down and raises some points about it, puts it off, hires high-powered lobbyists, and makes contacts here that cause people to go against it?

The Parent-Teachers Association, what kind of organization is this? What better people do we have advice us than the American Medical Association; Academy of Pediatrics; the Parent-Teachers Association; American Council on Alcohol Problems; American Medical Student Association; American Youth Works Center; American College of Preventive Medicine. Those are not two-by-four organizations. They are prominent organizations. They have the respect of the American people, and yet we have not taken action on this because alcohol interests have opposed it, opposed it, opposed it year after year.

Consumer Federation of America; The Children's Foundation; The American Association for Health Education; the National Education Association; NEA. That is a teacher's organization. They favor this amendment.

Every good organization in America favors it that I know of. I do not know of a good organization in America that opposes this amendment.

Why do we want to keep opposing it? The people cannot get this because they cannot get a vote on it.

March of Dimes; Association of Halfway House Alcoholism Programs. That is where people have gotten in trouble and then instead of putting them on probation, immediately they send them to a halfway house.

The law enforcement people know what trouble we have had with alcohol. All we want to do is to inform the American public. That is all we want to do, inform the American public. People do not have to follow it. But we have a duty, I think, to inform the public of these dangers.

The American Medical Association says we do. the Parent-Teachers Association says we do, and all these good organizations. And why not inform the public about these things?

Mr. HATCH and Mr. DANFORTH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah has the floor.

Mr. HATCH. If I can respond, much of what the Senator says is true, most of it, and I support him.

Mr. THURMOND. If anything I said is not true, call it to my attention. If it is in error, I will correct it.

Mr. HATCH. I think the distinguished Senator is an acknowledged leader in this area, and I am one of the first to acknowledge it, and I want to express to anybody who is watching or who cares that I appreciate it. As a matter of fact, he does not have a better advocate than I. All I am saying is this: There is a way of doing this, and there is not a way. The way he is doing it means it will never pass. Of course, that also is one reason he has brought it up on this bill, which he opposes.

If he will sit down and work it out with me and with other interested people, we can come up with warning langauge that is probably superior to this language that would be consensus language, and then we could start a public education program that would cause it to pass. I have no doubt about that. I think it is an idea which has its time now.

Frankly, I truly admire my colleague. There is nobody who admires him more than I do. I think I have shown that through the years, and I will stand with him and I will help, and I will do everything I possibly can to back him.

On this bill, I cannot back him. He knows that. It is a little embarrassing to me to have to move to table his amendment. I hope he will not put me to that, but if he does, I am going to have to do it because I am committed to this legislation and, frankly, I am committed to alcohol warning language that will go through the Congress, not just something that makes a point now. That is why I would move to table. I think the offer I have made is more than a good offer. He knows I live up to the things I say here on the floor to the best of my ability to do so.

So all I can say is that I agree with him except on this bill, and except with this lange. I think the language can be improved, and I think it can be made acceptable even to some who probably oppose it today, and if that is so, then we will really pass something. It would be landmark legislation that everybody, except perhaps certain alcohol beverage manufacturers, is going to be proud of.

Let me yield the floor to the distinguished Senator——

Mr. THURMOND. I am willing to do this. For year after year now, we have played around with this thing and we get no results.

Mr. HATCH. Right.

Mr. THURMOND. Perhaps we can do this, if the Senator is willing on that bill tomorrow to help to work these labels out and get them on that bill tomorrow that we bring out, and if the chairman of the committee is willing to work with us on that to get these labels in shape.

Both Senators have failed to do that with the very labels I have here. But if there is any little amendment we can submit to make them effective and bring them out in that bill tomorrow, I am willing to do that with the understanding that if we do not get action on that bill with labels in it when it comes up in the Senate, then I am going to be free to offer it in some other bill in the future.

Mr. HATCH. That is right. Let me just say this to the distinguished Senator. I will do everything in my power to work with him to come up with language that will work by tomorrow. I do not know if we will be able to do so, because we have to bring together a whole bunch of people and do it in such a way that we can conduct a public campaign and people can understand it. Assuming that we cannot arrive at langauge tomorrow, which does not give us much time, but we will make an effort, then I will help the Senator when it comes to the floor, because the bill will come to the floor, and I think we can resolve it.

Mr. THURMOND. I want it understood that if we bring something out here and then if it is stopped, and we cannot get the bill up, I will be free to take it up on any other piece of legislation in the future.

Mr. HATCH. I am with the Senator, and I will probably support the Senator at that time.

Mr. DANFORTH. Mr. President, I wonder if I may just interject myself briefly in this conversation because I——

Mr. THURMOND. I will be glad to yield for a minute.

The PRESIDING OFFICER. The Senator from Utah has the floor.

Mr. THURMOND. I thought I had the floor. I never gave it up.

The PRESIDING OFFICER. The Senator from Utah has the floor and yielded to the Senator from South Carolina.

Mr. HATCH. I yield to the Senator from Missouri such time as he desires.

Mr. DANFORTH. I would like to make this point before people start making deals about what is going to come up and who will bring up legislation on an hour's notice or 24 hours' notice.

This bill was referred to the Senate Commerce Committee. It was introduced last month. It was referred to the Senate Commerce Committee. No hearing has been held on it.

Mr. THURMOND. Why?

Mr. DANFORTH. No hearing has been requested by the distinguished authors.

Mr. THURMOND. I request it now. How soon can the committee hold the hearing?

Mr. DANFORTH. I am not the chairman of the committee.

Mr. THURMOND. The Senator is the ranking member.

Mr. HATCH. Will the distinguished Senator from Missouri help the distinguished Senator from South Carolina get a hearing?

Mr. DANFORTH. I will be happy to talk to the other Senator from South Carolina, the chairman of the Commerce Committee.

I would just like to point this out about this legislation. It is wonderful to stand on the floor of the Senate and pick out various industries and start attacking them for one reason or another, but this is clearly very far-reaching legislation. This legislation provides that on containers for alcoholic beverages—what is a container? A glass? A paper cup at the ball park? On containers of alcoholic beverages, one of five warning labels has to appear.

One of the warning labels says: "The consumption of this product which contains alcohol can increase the risk of developing hypertension, liver disease, and cancer."

Mr. THURMOND. That is what the doctors say.

Mr. DANFORTH. That is a very significant thing to put on somebody's cup of beer at the ballpark, without any hearing whatever in the Congress of the United States. We are assured that——

Mr. HATCH. If the Senator will yield on that point——

Mr. DANFORTH. Just a second. We are assured that liver disease and cancer, and so forth, are caused by this. Also, I point out that in its present form the term "sale and distribution" in the bill includes sampling or any other distribution not for sale.

So presumably in this bill in its present form if you had a guest over to your house for dinner and served that person a glass of wine which you gave away, you would have to have a warning on the wineglass.

It would seem to me, if I read this correctly, and I have not had a chance to read it yet—we have not had a hearing on it—that this kind of blockbuster legislation at least deserves to go through the reasonable legislative process. My hope is that the Senator from South Carolina will withdraw his amendment.

I do not want to join the chorus of approval for a bill that has never had a hearing, that was only introduced, as far as the Commerce Committee is concerned, a month ago and that provides if you have a guest over to your home and give him a glass of wine, you have to have a warning on the wineglass.

I think that is an extreme piece of legislation, and it deserves a little bit of attention in the regular course of legislation.

Mr. HATCH. I will add this: I think the Senator makes a good point. Actually Senator THURMOND'S amendment, when it came up in committee, was limited to distilled spirits, as I understand it, and one of the Senators added "beer and wine" onto the amendment. Everybody voted for it.

Of course, at that point everybody knew this amendment was dead because the distinguished Senator from Missouri points out some of the difficulties that come up, and that is why it never passed. That is why I am saying we are going to have to work out the language because, like all things around here, if you want to do good, you are going to have to get some sort of consensus.

Mr. THURMOND. Mr. President, will the Senator yield?

Mr. HATCH. I am delighted to yield.

Mr. THURMOND. I wanted to say, as to the sale or distribution, that is not just a glass of wine in your home, or something like that. It is the sale or distribution of it.

Mr. HATCH. I understand.

Mr. THURMOND. I understand my good friend from Missouri is a friend of Colonel Bush with whom I was in World War II and hold in high regard. But after all, we have to protect the public, Senator. And you are a man of the cloth, too, and I am sure that you would like to protect the public.

The ACTING PRESIDENT pro tempore. The comments should be to the Presiding Officer.

Mr. HATCH. May I add one other thing—I think we chatted enough—I will commit to the Senator from South Carolina if he will withdraw the amendment, and I think it is the appropriate thing to do, we will work out language that will be acceptable. I think that would have to include the language that will be passable and that will bring a consensus about, and we are going to have to also work, and I think a number of Senators, possibly including our friends from Missouri, will work to develop a public consensus for appropriate language.

I think it is an appropriate thing for the Senator to withdraw the amendment at this time with the assurance from me, and I add one other thing. This amendment can be drafted so that it is subject to the Labor and Human Resources Committee jurisdiction.

The way it is drafted, it had to be sent to the Commerce Committee. I agree that there have not been any hearings in the Commerce Committee.

But to correct a misconception, there have been in the Labor and Human Resources Committee. The Senator is right in everything that he has brought out with regard to our hearing in the Labor and Human Resources Committee. We did cover this matter.

I will ask the Senator to withdraw the amendment with those assurances.

Mr. THURMOND. With those assurances that they have given and with the further understanding if we do not get this bill up and pass it later, I will be free to offer it to the legislation in the future. I want that understood. I do not want anybody to say I withdrew it. I intend to offer it again.

The ACTING PRESIDENT pro tempore. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I want to express my views on this amendment and only take a few moments of the Senate's time and, if I could, invite the attention of the Senator from South Carolina so he will not misunderstand or misinterpret my position on this issue just as a Senator.

I had supported the labeling concept that had been basically included in the substance of the amendment of the Senator from South Carolina. It was altered and changed to include "beer and wine" in the committee.

The fact remains that there was at least a broad understanding, having spent time on the issue, that this would sound the death knell, because of various political factors, for any such labeling process to move forward.

That particular measure I still support. But I want to make it very clear that, as the Senator from Missouri has pointed out, this legislation which basically incorporates the amendment of the Senator from South Carolina has been referred to the Commerce Committee. Even should language be worked out that could be agreeable and acceptable to the Labor and Human Resources Committee and that was to be passed out on one of the most important health bills that we are facing, the NIAAA bill, that relates to drug abuse and alcoholism, an absolutely essential piece of legislation if we are going to deal with one of the great scourges of our country, on a very limited budget, I might add, about a tenth of what the Surgeon General had actually recommended in his recent report, it is absolutely essential that we pass it.

I want to make it clear that I will not risk that legislation moving forward with an amendment which is not related to our jurisdiction, when any single Member of this body can raise as a point of order and bring down that particular piece of legislation under article XV. I am not going to be a part of it. I will not be a part of it. I want to make that very clear. I will do the best I possibly can in trying to influence the members of that committee who have supported it on the basis of substance that if it is offered in that committee on that measure I will do the best I can to defeat it. If it is offered out here as a freestanding amendment and if it is not going to interfere with the basic acceptance of the legislation, I will support it. But I am going to make that call. I want to make that call.

I think that those of us who have been involved in this labeling issue for some period of time would have to be cautious about giving assurances to the membership as to whether those who have been involved on the Labor and Human Resources Committee would support such an amendment. Others can reach other conclusions.

The Senator from South Carolina has opposed this bill. I would ask the Senator from South Carolina if this amendment were accepted would he support the underlying bill?

Mr. THURMOND. I would have to think about it.

Mr. KENNEDY. There is a clear enough indication, Mr. President. I do not question the motives of the Senator from South Carolina, but he is opposed to the legislation. This is not relevant to the substance of the legislation.

What we are talking about now is a limited area, dealing in these issues with the whole question of the abuse of individual rights under the proliferation of polygraph testing.

It is a question of importance in terms of public policy and in terms of health policy, but it is not relevant to this particular issue.

I will certainly work with the Senator from South Carolina on this measure and work with the members of the Commerce Committee to see if some progress can be made.

But I, for one, do not want, at least the members of our committee, the Labor and Human Resources Committee, which basically has reported out this particular measure and hopefully will report out the other measures tomorrow, to misinterpret what at least my position would be. They will make their own judgment and make their own call. But this is how I view this particular amendment, and I would support the tabling resolution of the Senator from Utah.

The ACTING PRESIDENT pro tempore. The Chair will inquire of the Senator from South Carolina if he wishes his amendment to be withdrawn. It was not entirely clear to the Chair.

Mr. THURMOND. I would like to hear what the ranking member has to say on this.

Mr. HATCH. Let me say this: I agree that if we can work out language overnight, the amendment would have to be germane. That is part of working out the language. I think it can remain germane. I do not know if we can come up with the final language by tomorrow morning.

I have said to the distinguished Senator from South Carolina that I would work in good faith to see if we cannot do that by tomorrow morning's markup, that we will work very, very hard to get an amendment in shape with the appropriate public support for it that we can add to the bill on the floor of the Senate or to any other bill that he would like to add it to whether or not it is germane. I would help him, and I think he knows that. But I do not want it on this bill because it just is not germane here.

I hope the distinguished Senator will withdraw the amendment with that assurance, and he knows I will help him and I will help him regardless of what anybody thinks about it.

Mr. THRUMOND. Mr. President, with that understanding I will withdraw the amendment at this time.

The ACTING PRESIDENT pro tempore. The amendment is withdrawn.

Mr. THURMOND. I do not want to give assurances in the future as to what course it will take if we do not get something worked out in the committee.

Mr. HATCH. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. KENNEDY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

AMENDMENT NO 1474

(Purpose: To make certain technical corrections)

Mr. KENNEDY. Mr. President, I send an amendment to the desk on behalf of myself and Senator HATCH and ask for its immediate consideration.

The ACTING PRESIDENT pro tempore. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Massachusetts [Mr. KENNEDY], for himself and Mr. HATCH, proposes an amendment numbered 1474.

Mr. KENNEDY. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

On page 19, line 3, strike out "1987" and insert in lieu thereof "1988".

Beginning on page 22, strike out line 22 and all that follows through page 23, line 3, and insert in lieu thereof the following new paragraph:

(1) IN GENERAL.—Subject to paragraph (2), any employer who violates any provision of this Act may be assessed a civil penalty of not more than $10,000.

On page 35, strike out lines 18 through 23 and insert in lieu thereof the following:

(2) the employer that requested the test;

(3) any person or governmental agency that requested the test as authorized under subsection (a), (b), or (c) of section 7; or

(4) any court, governmental agency, arbitrator, or mediator, in accordance with due process of law, pursuant to an order from a court of competent jurisdiction.

Mr. KENNEDY. Mr. President, this is a technical amendment that basically changes the date of the act from 1987 to 1988.

Mr. HATCH. Mr. President, the amendment offered by the Senator from Massachusetts and myself will correct two apparent technical difficulties in the bill. First, the amendment will delete the language of S. 1904 which concerned potential monetary fines for failing to post notices concerning the prohibitions called for in this act.

It was not our intent to create yet another regulatory burden for employers. Instead, we wanted to make clear how serious Congress feels about this issue. After careful review, we have decided that the Fair Labor Standards Act already has ample provisions in this area, and the requirements for posting of a notice concerning polygraph examinations need not be treated any differently than existing requirements.

The second portion of the amendments makes clear who can have access to information derived from a polygraph test. The amendment makes clear a court, a governmental agency, an arbitrator or a mediator may have such information if obtained pursuant to an order from a court of competent jurisdiction.

This new language was added to clarify the status of parties who may be in arbitration or mediation over such matters as wrongful discharge or some other adverse employment action. In such instances, possession of the test information, if obtained in the appropriate manner, may expedite resolution of the dispute.

Mr. President, this amendment should help clarify two technical areas of the bill, and I hope my colleagues will approve their adoption.

The ACTING PRESIDENT pro tempore. Is there further debate on the amendment? If not, the question is on agreeing to the amendment.

The amendment (No. 1474) was agreed to.

Mr. HATCH. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. KENNEDY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

REMOVAL OF INJUNCTION OF SECRECY

The ACTING PRESIDENT pro tempore. As in executive session, without objection, it is ordered that the injunction of secrecy be removed from a supplementary protocol to the 1970 Tax Convention with Belgium (Treaty Document No. 100-15), transmitted to the Senate on February 29, 1988, by the President; and ask that the protocol be considered as having been read the first time; that it be referred, with accompanying papers, to the Committee on Foreign Relations and ordered to be printed; and that the President's message be printed in the RECORD.

The message of the President follows:

To the Senate of the United States:

I transmit herewith, for Senate advice and consent to ratification, the Supplementary Protocol Modifying and Supplementing the Convention between the United States of America and the Kingdom of Belgium for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Re-

spect to Taxes on Income, together with a related exchange of notes. The Supplementary Protocol and the exchange of notes were signed at Washington on December 31, 1987. I also transmit for the information of the Senate the report of the Department of State with respect to the Protocol.

Pending the successful conclusion of a comprehensive new income tax convention, the Supplementary Protocol will make certain improvements in the existing convention intended to promote the development of economic relations between the United States and Belgium.

It is most desirable that this Protocol be considered by the Senate as soon as possible and that the Senate give advice and consent to ratification.

RONALD REAGAN.

THE WHITE HOUSE, *February 29, 1988.*

APPOINTMENT BY THE VICE PRESIDENT

The ACTING PRESIDENT pro tempore. The Chair, on behalf of the Vice President, pursuant to 22 U.S.C. 276h-276k, as amended, appoints the following Senators as members of the Senate delegation to the Mexico-United States Interparliamentary Group during the second session of the 100th Congress, to be held in New Orleans, LA, March 4-8, 1988: the Senator from Alaska [Mr. MURKOWSKI] and the Senator from Arizona [Mr. MCCAIN].

Mr. HATCH. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. SANFORD). Without objection, it is so ordered.

CLOTURE MOTION

Mr. BYRD. Mr. President, I am not particularly eager to offer a cloture motion on this bill, but I feel constrained to do so after having discussed the matter with the two leaders, the two managers of the bill. Senators have had an ample opportunity and plenty of time to come over and offer amendments. As I understand the situation, an amendment was offered. It was discussed and withdrawn. It was not a germane amendment. Mr. President, I am sorry that Senators apparently are not showing a disposition to call up amendments today.

This is an important bill. I shall offer a cloture motion which will mature on Thursday. In the meantime, I hope that Senators can come to some agreements. I will be very happy to offer a time agreement, allowing for germane amendments to be called up and voted on and disposed of so that the Senate could get on with this business. It will get on with this business, one way or another; and I hope that Senators will cooperate in helping the Senate to complete this business sooner rather than later.

So I hope that this cloture motion will not have to mature, but just as a bit of insurance, Mr. President, I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair, without objection, directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators in accordance with the provisions of Rule XXII of the Standing Rules of the Senate hereby move to bring to a close the debate upon the committee substitute to the bill S. 1904, Polygraph Protection Act of 1987.

Senators Edward M. Kennedy, Howard Metzenbaum, Brock Adams, Lowell Weicker, Patrick Leahy, John F. Kerry, Tom Harkin, Thomas Daschle, Orrin G. Hatch, Don Riegle, Christopher Dodd, Barbara A. Mikulski, Timothy E. Wirth, J.J. Exon, Dale Bumpers, and Robert Stafford.

The PRESIDING OFFICER. The majority leader.

Mr. BYRD. Mr. President, it is 5 o'clock p.m. I do not want to keep the Senate in further today if Senators are not going to call up amendments. The cloture motion will ripen by Thursday. In the meantime I would urge all Senators on both sides who are interested in the bill to try to get their heads together and resolve their problems and call up their amendments, dispose of them, let us pass the bill and get on to something else.

Mr. President, there will be no more rollcall votes today.

Mr. RIEGLE. Mr. President, today, March 1, marks the beginning of "National Social Work Month." I want to recognize the special contributions made by our Nation's social workers to the well-being of their fellow Americans.

Social workers deserve this recognition because they act on their compassion for others by working for more effective social services and programs. They display a commitment to professional integrity and a dedication to public service.

Social workers are involved in the entire range of activities from direct client counseling and family intervention services to the more broad matters of policy and program development and advocacy. They assist people from the entire range of socio-economic backgrounds.

I would like to underscore our Nation's social workers' long and proud tradition of reaching out to serve those most in need. They do, indeed, stand on the front line of battle against our most pressing social problems. Many victories, large and small, are attributable to their tireless efforts.

Mr. President, I worked closely with the National Association of Social Workers [NASW] on the budget this past fall in an effort to gain additional funding for the title XX social services block grant. NASW is the largest organization of social workers, speaking as one voice to promote our Nation's social and community life. NASW joined in a coalition of 95 national organizations, called Generations United, which successfully worked with other Members of Congress and I to secure an additional $50 million authorization for the social services block grant for fiscal year 1988.

Today, the NASW embarks on a public service campaign, marking the beginning of "Social Work Month," emphasizing the importance of education needed to stop the AIDS epidemic. The campaign also seeks to raise public awareness about the needs of AIDS patients and their families. As the painful toll of AIDS epidemic rises, social workers once again occupy the front lines to assist the afflicted. The NASW campaign will serve to enhance public understanding of the psychological and social burdens that often accompany AIDS, or the fear, hate and discrimination encountered by patients, families and friends.

Mr. President, I am pleased to have this opportunity to applaud the countless efforts made by social workers to improve the lives of people in need of assistance. As the challenges faced by social workers mount, I am certain they will continue to meet the challenge. It is with great appreciation that America celebrates "National Social Worker Month."

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-2630. A communication from the Deputy Director of the Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, a report on the reapportionment of an appropriation of an account of the Veterans' Administration; to the Committee on Appropriations.

EC-2631. A communication from the Secretary of Health and Human Services, transmitting a draft of proposed legislation to repeal the authority for special pay for psychologists in the Commissioned Corps of the Public Health Service; to the Committee on Armed Services.

EC-2632. A communication from the Chairman of the Board of Directors of the Panama Canal Commission, transmitting a draft of proposed legislation to authorize expenditures for fiscal year 1989 and 1990 for the Panama Canal Commisison to operate and maintain the Panama Canal and for other purposes; to the Committee on Armed Services.

EC-2633. A communication from the Under Secretary of Defense (Acquisition), transmitting, pursuant to law, the annual report on Chemical Warfare—Biological Research Program Obligations for fiscal year 1987; to the Committee on Armed Services.

EC-2634. A communication from the Secretary of Housing and Urban Development,

Daily Digest

HIGHLIGHTS

House passed civil rights restoration bill.

Senate

Chamber Action

Routine Proceedings, pages S1673–S1788

Measures Introduced: Nine bills and one resolution were introduced, as follows: S. 2116–2124, and S.J. Res. 268.

Page S1745

Measures Reported: Reports were made as follows:

S. 450, to recognize the organization known as the National Mining Hall of Fame and Museum. (S. Rept. No. 100–294)

S. 840, to recognize the organization known as the 82nd Airborne Division Association, Incorporated. (S. Rept. No. 100–295)

Page S1745

Polygraph Protection Act: Senate continued consideration of S. 1904, to strictly limit the use of lie detector examinations by employers involved in or affecting interstate commerce, with a committee amendment in the nature of a substitute, taking action on additional amendments proposed thereto, as follows:

Page S1678

Adopted:

(1) By unanimous vote of 96 yeas (Vote No. 35), Quayle modified Amendment No. 1606, to provide an exemption for preemployment tests for use of controlled substances.

Page S1701

(2) Thurmond Amendment No. 1607, to provide a restricted exemption for security services. (By 20 yeas to 76 nays (Vote No. 36), Senate earlier failed to table the amendment.)

Page S1701

(3) Nickles Amendment No. 1608 (to Amendment No. 1607), of a perfecting nature.

Page S1701

(4) Cochran Amendment No. 1617, to remove the provisions establishing qualifications for polygraph examiners.

Page S1726

(5) Gramm Amendment No. 1618, to provide for national security exemptions.

Page S1728

(6) Gramm Amendment No. 1619, to provide a nuclear power plant exemption.

Page S1728

(7) Metzenbaum Amendment No. 1621, to express the sense of the Senate that the proposed loan by the World Bank to provide Mexico's steel companies with subsidized financing is not in the best interests of the United States or in the best interests of Mexico's own economic revitalization, and that the World Bank should rejected the proposed plan. (By 45 yeas to 48 nays (Vote No. 41), Senate earlier failed to table the amendment.)

Page S1733

Rejected:

(1) Boschwitz Amendment No. 1610, to permit an employer to administer a lie detector test to an employee if the employee requests the test. (By 56 yeas to 38 nays (Vote No. 37), Senate tabled the amendment.)

Page S1717

(2) Gramm Amendment No. 1615, to provide a common carrier exemption. (By 55 yeas to 37 nays (Vote No. 38), Senate tabled the amendment.)

Page S1721

(3) Cochran Amendment No. 1616, in the nature of a substitute. (By 65 yeas to 29 nays (Vote No. 39), Senate tabled the amendment.)

Page S1723

(4) Gramm Amendment No. 1620, to provide an exemption for use of polygraph tests administered in accordance with Department of Defense Directive 5210.48. (By 57 yeas to 35 nays (Vote No. 40), Senate tabled the amendment.)

Page S1728

Withdrawn:

(1) Helms Amendment No. 1488, to express the sense of the Senate that the United States is violating the ABM Treaty.

Page S1683

(2) Boschwitz Amendment No. 1609, to permit an employer to administer a lie detector test to an employee if the employee requests the test.

Page S1714

A unanimous-consent agreement was reached providing for further consideration of the bill and amendments proposed thereto.

Page S1732

Senate will continue consideration of the bill and amendments proposed thereto on Thursday, March 3, with a cloture vote to occur thereon, with the required quorum call having been waived.

Motion to Request Attendance: During today's proceedings, the following also occurred:

By 67 yeas to 27 nays (Vote No. 34), Senate agreed to a motion to instruct the Sergeant at Arms to request the attendance of absent Senators.

Page S1679

Statements on Introduced Bills: Page S1746

Amendments Submitted: Page S1759

Additional Cosponsors: Page S1759

Notices of Hearings: Page S1772

Authority for Committees: Page S1772

Additional Statements: Page S1772

Quorum Calls: One quorum call was taken today. (Total—12)

Page S1678

Record Votes: Eight record votes were taken today. (Total—41)

Pages S1679, S1701, S1712, S1719, S1723, S1726, S1731, S1737

Recess: Senate convened at 10 a.m. and recessed at 10:09 p.m., until 9 a.m., on Thursday, March 3. (For Senate's program, see the remarks of Senator Byrd in today's Record on page S1787.)

Committee Meetings

(Committees not listed did not meet)

CORPS OF ENGINEERS

Committee on Appropriations: Subcommittee on Energy and Water Development held hearings to review those programs administered by the U.S. Army Corps of Engineers, receiving testimony from Robert W. Page, Assistant Secretary of the Army for Civil Works; Lt. General E.R. Heibert III, Chief of Engineers; and Major General Henry J. Hatch, Director of Civil Works.

Subcommittee recessed subject to call.

APPROPRIATIONS—DOE

Committee on Appropriations: Subcommittee on the Interior and Related Agencies held hearings on proposed budget estimates for fiscal year 1989, receiving testimony in behalf of funds for their respective activities from Chandler L. van Orman, Deputy Administrator, Economic Regulatory Administration, Helmut A. Merklein, Administrator, Energy Information Administration, and George B. Breznay, Director, Office of Hearings and Appeals, all of the Department of Energy.

Subcommittee will meet again on Tuesday, March 16.

DOD—SPECIAL ACCESS PROGRAMS

Committee on Armed Services: Subcommittee on Strategic Forces and Nuclear Deterrence concluded closed joint hearings with the Subcommittee on Conventional Forces and Alliance Defense to review special access programs of the Department of Defense, and the assessment of the INF Treaty's possible impact on DOD's special access programs, after receiving testimony from officials of the Department of Defense and the Armed Services.

1989 BUDGET

Committee on the Budget: Committee continued hearings in preparation for reporting the first concurrent resolution on the fiscal year 1989 budget, receiving testimony from Alan Greenspan, Chairman, Board of Governors, Federal Reserve System.

Hearings continue tomorrow.

BUSINESS MEETING

Committee on Energy and Natural Resources: Committee ordered favorably reported H.R. 2629, to clarify the conveyance and ownership of submerged lands by Alaska Natives, Native Corporations and the State of Alaska.

EPA/NRC BUDGETS

Committee on Environment and Public Works: Committee concluded hearings to review those programs which fall within its jurisdiction as contained in the President's proposed budget for fiscal year 1989, after receiving testimony in behalf of funds for their respective activities from Lee M. Thomas, Administrator, and A. James Barnes, Deputy Administrator, both of the U.S. Environmental Protection Agency; Lando W. Zech, Jr., Chairman, and Thomas M. Roberts, Kenneth M. Carr, Frederick M. Bernthal, and Kenneth C. Rogers, all Commissioners, all of the Nuclear Regulatory Commission.

BUSINESS MEETING

Committee on Labor and Human Resources: Committee ordered favorably reported the following business items:

An original bill to authorize funds for the Community Health Centers Program;

H.R. 3097, to authorize grants to assist organ procurement organizations, with an amendment;

tests currently conducted. At the same time, employers will be allowed to use the polygraph test in circumstances most useful to them.

Other amendments that I offered in 1986 sought to further protect the rights of employees. One of my proposals would have ensured that employees were not dismissed or discriminated against solely for refusing to take a polygraph test. Another would have prevented similar adverse actions against people who actually fail a polygraph test. In both cases, employers would have been required to show further evidence in order to act against an employee. In addition, I proposed that polygraph test results be kept confidential. All three of these provisions have been included in S. 1904 and these are crucial to the protection of an employee's civil rights when tests are permitted.

I am also pleased that S. 1904 includes my proposal to preclude the preemption of State law. The State of Connecticut, for example, has very tough restrictions on polygraph tests that I do not want compromised by a weaker Federal law. Under S. 1904, the Federal statute would become the minimum standard governing polygraph use, but stronger State laws would remain in force.

Finally, I am pleased that S. 1904 details important and comprehensive guidelines for the conduct of polygraph tests. An employee who takes a test must have notice as to the time, place, nature, and procedures of the test, and must be given an opportunity to review the questions to be asked. The examinee may not be asked questions concerning political or religious beliefs, nor other personal matters, and may not be subjected to probing and badgering questioning. The examine is also allowed to terminate the test at any time. These are important guidelines, because they systematize polygraph tests and take much of the mystery out of the process.

Mr. President, we have before us an excellent opportunity to enact legislation concerning a widespread and questionable industry practice; a practice under which an employee's right to privacy can now be denied under virtually any circumstance; a practice under which employees can now be stigmatized as criminals or liars based on the results of a scientifically unreliable testing procedure. The proposal before us today would apply laws consistently across the board; it is a compromise in which the interests of both sides are taken into account; and it is one based on the hard evidence concerning the accuracy of polygraph tests. I urge the swift passage of S. 1904.

Mr. HEINZ. Mr. President, I rise in strong support of S. 1904, the Polygraph Protection Act of 1987. By prohibiting employers from using lie detectors to screen potential or present employees, S. 1904 will help eliminate a significant and growing hazard in today's workplace.

I support this legislation for several reasons. First, a wide variety of studies have shown that polygraphs are unreliable in detecting truth from deception. I would point out that it is the professional judgment of groups such as the American Psychologists Association, the American Medical Association that no scientific evidence exists to justify the reliability of polygraphs as pre-employment screening tools.

In an effort to quantify the accuracy of polygraphs, Congress' own Office of Technology Assessment conducted an intensive analysis and review of research studies in this area in 1983. The OTA report only found evidence to justify the validity of polygraphs when used to investigate specific criminal incidents. In these instances, OTA rated a polygraph's ability to detect deception at "better than chance, but with error rates that could be considered significant." One study reviewed in the OTA analysis found that a polygraph incorrectly identified innocent respondents 75 percent of the time.

With success rates like this, it is no wonder that most Federal courts refuse to admit polygraph test results as evidence in criminal trials.

But as information about the inaccuracy of polygraphs continues to mount, these machines are increasingly used as a means to screen potential employees. It is estimated that 2 million polygraphs are administered each year in this country, more than four times the amount administered 10 years ago. Over 75 percent of these tests are administered not as part of an investigation into theft where the employer has reason to suspect an employee but rather as a means to disqualify an applicant from being hired. And it is precisely these type of tests that OTA has found to have the highest percentage of "false positives"—instances in which the polygraph incorrectly identifies innocent persons as deceptive. As many as 50,000 Americans each year are wrongfully denied jobs or promotions because of prescreening tests that, according to OTA, have error rates as high as 50 percent. For many of these people, a failed polygraph, accurate or not, leaves a permanent blemish on their employment record.

Mr. President, I would point out that S. 1904 has been tightly drawn to address only the most dangerous and inappropriate uses of polygraphs—to screen potential employees or randomly test present employees. The bill does not prohibit the use of lie detectors in investigations of wrongdoing where an employer has reason to suspect an employee of involvement in such a crime. In these instances, however, no adverse action can be taken against an employee based solely on the results of a polygraph. As such, the polygraph may be used as a confirmatory instrument, which, given its dubious reliability, is appropriate.

Some will argue that polygraph protection is a function best left to State legislatures, 21 of whom have enacted laws to prohibit or restrict the use of these machines. My response to that argument is twofold. First, these laws are fine if a prospective employee is fortunate to live in one of the 21 States that regulates polygraphs. But what of job applicants in the remaining 29 States who may still be forced to take a preemployment polygraph? Furthermore, as the body with control over interstate commerce, the Federal Government has the authority and the responsibility to regulate the use of the polygraph, an instrument widely employed by industries engaged in this type of commerce.

In conclusion, S. 1904 is balanced and necessary legislation. Studies have repeatedly shown that the polygraph is an unreliable instrument. More importantly, its use may have potentially dangerous and unintended effects on the ability of an innocent and honest job applicant or employee to find or keep a job. I urge my colleagues to support this legislation.

MORNING BUSINESS

Mr. BYRD. Mr. President, I ask unanimous consent that there be a period for morning business not to extend beyond 10 minutes and that Senators may speak therein.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE INTENT OF THE HARKIN/HUMPHREY AMENDMENT TO S. 557, THE CIVIL RIGHTS RESTORATION ACT

Mr. KENNEDY. As Democratic floor manager of S. 557, the Civil Rights Restoration Act of 1987, and following my discussion with members of the Subcommittee on the Handicapped and Others, I would like to ask my colleague from Iowa, Senator HARKIN, to help clarify the record with regard to amendment No. 1396 that he cosponsored and that was added to the bill during Senate consideration of S. 557 on January 28, 1988. We believe we had a clear understanding of the purpose of the amendment when we negotiated and agreed to it and I would like that purpose to be established for the record.

Mr. WEICKER. As an original cosponsor of S. 557 and former chairman and the current ranking minority member of the Subcommittee on the Handicapped, I too would like to ask my colleague, the current chairman of the Subcommittee on the Handicapped, to reiterate his understanding of the amendment.

Mr. HARKIN. I would be happy to set forth for the record the background and intent of this amendment. On January 28, I sponsored amend-

want us to do for them. I do not know how much is too much. $4 billion? $40 billion? $400 billion? This Senator says enough is enough.

Mr. DODD. Mr. President, does the Senator yield back the remainder of his time?

Mr. HEINZ. Is the Senator prepared to yield back the remainder of his time?

Mr. DODD. Yes.

Mr. HEINZ. I yield back the remainder of my time.

Mr. DODD. Mr. President, I move to table the amendment, and I ask for the yeas and nays.

The PRESIDING OFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to table the amendment. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Tennessee [Mr. GORE], the Senator from Iowa [Mr. HARKIN], the Senator from Hawaii [Mr. INOUYE], the Senator from Illinois [Mr. SIMON], and the Senator from Mississippi [Mr. STENNIS] are necessarily absent.

I also announce that the Senator from Delaware [Mr. BIDEN] is absent because of illness.

Mr. SIMPSON. I announce that the Senator from Kansas [Mr. DOLE] is necessarily absent.

The result was announced—yeas 45, nays 48, as follows:

[Rollcall Vote No. 41 Leg.]

YEAS—45

Adams	Fowler	Nunn
Baucus	Graham	Packwood
Bingaman	Hatfield	Pell
Boren	Humphrey	Proxmire
Bradley	Johnston	Pryor
Breaux	Kassebaum	Reid
Bumpers	Kennedy	Sanford
Chafee	Kerry	Simpson
Chiles	Lautenberg	Stafford
Cochran	Leahy	Stevens
Cohen	Matsunaga	Trible
Cranston	McCain	Warner
Daschle	Mitchell	Weicker
Dodd	Moynihan	Wilson
Evans	Murkowski	Wirth

NAYS—48

Armstrong	Glenn	Metzenbaum
Bentsen	Gramm	Mikulski
Bond	Grassley	Nickles
Boschwitz	Hatch	Pressler
Burdick	Hecht	Quayle
Byrd	Heflin	Riegle
Conrad	Heinz	Rockefeller
D'Amato	Helms	Roth
Danforth	Hollings	Rudman
DeConcini	Karnes	Sarbanes
Dixon	Kasten	Sasser
Domenici	Levin	Shelby
Durenberger	Lugar	Specter
Exon	McClure	Symms
Ford	McConnell	Thurmond
Garn	Melcher	Wallop

NOT VOTING—7

Biden	Harkin	Stennis
Dole	Inouye	
Gore	Simon	

So the motion to table was not agreed to.

The PRESIDING OFFICER. The majority leader.

Mr. BYRD. Mr. President, I ask unanimous consent that the call for the yeas and nays be vitiated.

Mr DODD. Reserving the right to object.

The PRESIDING OFFICER. Is there objection?

Mr. BYRD. Mr. President, I believe some Senators have gone home.

Mr. President, I ask unanimous consent that the call for the yeas and nays be vitiated.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, that is the last rollcall vote.

The PRESIDING OFFICER. The question is on the amendment.

All those in favor will signify by saying "aye."

Opposed, "no."

The Chair has a doubt.

The Chair will have a vote count. All those in favor of the amendment will raise their hands and the clerk will count.

All those opposed, raise their hands.

The amendment is agreed to.

The amendment (No. 1621) was agreed to.

Mr. METZENBAUM. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HEINZ. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DODD. Mr. President, I rise today in support of S. 1904, the Polygraph Protection Act of 1987.

I am very pleased that the Senate is taking up this matter today. This is an issue Congress has struggled with for several years now, and it is one of great importance to employers and employees alike. According to the Office of Technology Assessment, there were approximately 2 million polygraph tests administered in 1986, 98 percent of them by private employers. Clearly, the use of these tests is widespread, and both employees and employers have very important and real concerns. Employees want and deserve to have their rights protected. Employers want and deserve to be able to protect themselves from dishonest employees.

Previous polygraph proposals have stalled in Congress because they have not embodied a consistent and logical approach to this problem. As all of us know, the House twice in the past 2 years has passed legislation restricting polygraph use. In 1986, the full House considered a bill that would have completely banned polygraph testing except by nursing homes and day care centers, which could have used the test to screen applicants for positions involving direct contact with children or the elderly. On the floor, amendments were added to allow testing of security guards as well as workers and contractors employed by public utilities.

This year, the House passed a similar bill, H.R. 1212. Again, the ban was to be complete, but in floor action amendments were adopted to exempt security firms from the prohibition. Manufacturers and/or distributors of controlled substances were also permitted to use polygraph tests, but only in the conduct of criminal investigations.

Mr. President, the problem with the House approach in the past two Congresses is that it would create selective and subjective polygraph bans that vary according to the type of business concerned. This is illogical, and contrary to the very reasons we want to national polygraph policy in the first place. Lie detectors are inherently unreliable and there is no empirical way to differentiate one industry from another in terms of their respective need for exemptions form the polygraph ban. Security firms versus day car centers; nursing homes versus nuclear powerplants; who needs the polygraph more?

I am proud to take at least partial credit for the new approach to polygraph legislation embodied in S. 1904. In 1986, the Senate Labor Committee reported polygraph legislation based on the bill which had just passed the House of Representatives. However, that legislation was never considered on the floor of the Senate because prospective amendments to create industrywide exemptions eroded political consensus for the bill. In anticipation of this problem, I discussed seven amendments during that 1986 committee markup, six of which form the basis for the radically different approach before us today.

Two of my amendments sought to ensure that law governing polygraph use was consistent for all industries, and was based on scientific evidence concerning polygraph reliability. One amendment would have banned all random or preemployment testing, and another would have permitted tests only in the course of an investigation into theft or criminal violations. These proposals were based on expert testimony that both random and preemployment testing programs were simply unreliable and that accuracy is much greater in cases where tests are part of an ongoing investigation. These amendments formed the basis for the approach before us today: a ban on all preemployment and/or random testing programs, with tests permitted as part of ongoing investigations of loss or theft.

Of course this approach makes neither employers nor employees ecstatic. But such is the nature of the legislative process, that opposing sides must compromise. What is significant is that S. 1904 meets the principal objectives of both sides. On the one hand, the ban on random and preemployment screening will protect employees from inaccurate testing and will eliminate approximately 70 percent of the

laxity with which we jump into foreign affairs, knowing half of what we are talking about or half of what we are doing, and we ask people in a 15-minute period to vote on something that could have extraordinarily adverse effects on our foreign policy.

Frankly, I am appalled that the Secretary of the Treasury would have his arm twisted to even vote against this loan. That is what I think is wrong about what we are doing. I would hope my colleagues would join with us in taking a second look and a second thought about the hasty action we are taking that could have some very, very bad effects on our ability to conduct foreign policy with the nearest neighbor we have to the south, and one which has plenty of problems.

Mr. DODD. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 3 minutes and 26 seconds.

Mr. DODD. I reserve the remainder of my time.

Mr. METZENBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. METZENBAUM. Mr. President, I have heard it said that this action will have no impact on the loan. I do not know about that. I think that there is a possibility that if the World Bank learns that the U.S. Senate is not in favor of this loan and recognizes what it will do to the American steel industry that we still might save the World Bank from the error of its own ways.

I think the World Bank performs a useful purpose in many instances but quite often I think it goes overboard. I would not be here standing supporting the World Bank creating a new insurance industry in Mexico, and I am not in favor of creating a new steel industry in Mexico. It does not make any sense when we have steelworkers walking up and down the streets of every State in the country where there are steel operations in effect, and they are unemployed. And they do not understand this. You would not understand it either if you were they.

It has been stated this will hurt the domestic steel industry if we defeat this resolution. I do not understand that at all. The domestic steel industry does not want this loan to be made. And it should not be made. It is wrong to make it. And the only reason we are acting as we are here this evening is because the World Bank gave us 3 days' notice—3 days' notice—before we learned what was involved. And we urged them to postpone it, and if they did we would not have gone forward with the resolution this evening.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. DODD. Mr. President, I yield 1 minute to the distinguished Senator from Alaska.

Mr. STEVENS. Mr. President, it is almost impossible for this Senator to conceive an action by the World Bank that would not involve a conflict with some industry in the United States. I cannot conceive how these countries can repay our banking system the amount that they owe us unless we keep our nose out of their business, and I really cannot understand why in a 15-minute period we are asked to pass a resolution of this gravity without any prior study, without any reference to a committee, and without any compliance with what I consider to be the proper procedure for consideration of such a far-reaching question.

I am going to oppose this because I think those countries need jobs; and if they have jobs, they will buy more of our products, not less.

Mr. DODD. Mr. President, I yield 1 minute to the distinguished Senator from Rhode Island.

Mr. CHAFEE. Mr. President, we want Third World countries to pay their debts to us. We want Third World countries to be good customers of ours, but apparently we do not want those Third World countries to compete with us in any respect; we do not want to, apparently, lend them any money to improve their capacity to purchase goods from us and to pay back their debt. That, to me, is ridiculous. I think we are making a great mistake in meddling in this business.

I want to commend the Senator from Connecticut and others who have made remarks in that connection. I think we ought to oppose this resolution.

Mr. DODD. Mr. President, let me mention, because I think it is worth noting here, that we have been fighting for so long to get the Mexican Government to lift those restrictive tariffs, not to subsidize their industry. Somehow we happen to believe or think that if we can reject the World Bank loan, the Japanese or someone else is not going to go in, divide that kind of money which probably will not secure for us the kind of improvements we would like to see in Mexican public policy decisions when it comes to tariffs and subsidies.

I would just implore, if there were more time, my colleagues to read in fact what this agreement involves, in fact what we have secured from the Mexican Government as a result of this loan.

Mr. President, I know there is time remaining on the other side, but at the appropriate time I would move to table this resolution and ask for the yeas and nays on it, but I will withhold that motion until my colleagues have expended their time.

I reserve the remainder of my time.

(By request of Mr. SIMPSON the following statement was ordered to be printed in the RECORD:)

● Mr. DOLE. Mr. President, I am pleased to join as a sponsor of this amendment in opposition to the proposed World Bank loan to Mexico. We all would applaud most efforts to help Mexico improve its economy, but it seems to me that this $400 million loan targeted to Mexico's steel industry is misguided.

The global market for steel already suffers from serious overcapacity. Our domestic industry has gone through the pain of reducing capacity, as has the steel industry in Europe and elsewhere. This pain has been very real. It has meant lost jobs, lost incomes, devastated communities.

Our domestic steel industry continues its efforts to modernize, to become more productive, to become more competitive in the world marketplace. The effort has not been easy, and we still have a way to go.

In this context, I question the wisdom of targeting assistance to the Mexican steel industry. It seems clear that the world market does not need additional production. I understand that the proposed loan will not add capacity, but it certainly will add product.

After all our own steel industry has gone through to reduce capacity and become more competitive, it seems particularly aggravating that the World Bank would strive to increase world production.

I am especially gratified that the administration has changed its position and will now vote against this loan when the matter comes before the World Bank tomorrow. I can understand the desire of the administration to help Mexico revitalize its economy, but I am sure there is a better way to do it.

I want to emphasize that this is not "Mexico bashing." That would be in no one's interest. However, it would seem far preferable both for Mexico and our own steel industry if the World Bank would look for ways to help Mexico develop its economy in industries where there is an excess demand, not where there is an excess supply.●

Mr. HEINZ. Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator from Pennsylvania has 3 minutes.

Mr. HEINZ. I yield myself 1 minute.

Mr. President, as the Senator from Ohio has stated, this comes to the floor because we have no alternative. The World Bank will act tomorrow, and, as he says, they have given us less than 3 days's notice.

I think I know the reason. The Senator from Connecticut has said, "Let us examine what is part of this agreement." The first part of it, I say to the Senator from Connecticut, is $100 million to subsidize—straight subsidy—raw materials for the Mexican steel industry. This is not simply $400 million of investment; it is subsidy.

Mr. President, if we made a loan of this equivalent size in the United States to our steel industry, it would be the equivalent of a $4 billion loan.

I listened to my colleagues who say this is not a good amendment because we should do anything the Mexicans

Mr. STEVENS. I object. I think we ought to comply with the rules and give the opposition time to the minority leader, if there is no time designated. He is entitled to equal time.

Mr. BRADLEY. If the Senator will yield, I am the opposition.

Mr. STEVENS. The Senator does not have any time.

The PRESIDING OFFICER. Objection is heard.

Mr. SIMPSON addressed the Chair.

The PRESIDING OFFICER. The Republican leader.

Mr. SIMPSON. Mr. President, at the time that unanimous-consent request was propounded, I had been advised that Senator DODD was speaking in opposition to the measure or else I would not have concurred with it. If we have three people, each with 5 minutes, speaking in favor of it and no one in opposition, I hope our colleagues would give 5 minutes through unanimous consent to the Senator from New Jersey or someone who wishes to speak on the other side so we might have total fairness in the debate.

Mr. METZENBAUM and Mr. DODD addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. METZENBAUM. Mr. President, there is an element of unfairness but it was not intended to be that way because the proponents have 10 minutes and the opposition has 5 minutes.

If the minority leader agrees, I would suggest we give Senator DODD the additional 5 minutes and let him dispense time to Senator BRADLEY.

I ask unanimous consent that Senator DODD be given an additional 5 minutes.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. BRADLEY. Will the Senator yield?

Mr. DODD. I yield 2 minutes to the distinguished Senator from New Jersey.

Mr. BRADLEY. Mr. President, just to recap, this amendment has no impact whatsoever on the loan that the World Bank will approve tomorrow.

Second, I do not think we want to start voting on every loan that the World Bank offers. We have enough things to vote on as it is.

Third, half the population of Mexico is under 15 years of age.

There is no way that they are going to generate enough jobs to employ their population if they do not get sufficient investment. If they do not get sufficient investment to generate jobs, there is only one place that those young people are going to head, and that is north.

Fourth, we are in the middle of a Presidential campaign in Mexico. The Presidential candidate of one party is known to be pro-American. This is the kind of amendment which is offered for domestic political consumption that can become a lightning rod in an election in Mexico.

Mr. President, I hope that we will approach this a little more soberly, and we will, of course, be concerned about the plight of steelworkers in this country but that we will actually do something to improve the plight of steelworkers in this country as opposed to making a gesture that will have no impact on the loan that will be approved tomorrow.

Mr. STEVENS. Mr. President, would the Senator yield a minute of his time?

Mr. DODD. I would prefer to comment, if I could and if there is some time remaining, I will yield.

Mr. President, how much time do I have remaining?

The PRESIDING OFFICER (Mr. ROCKEFELLER). Eight minutes.

Mr. DODD. Let me commend my colleague from New Jersey, who is always succinct and eloquent. Obviously, if there is anything that will legitimately help the steelworkers in this country, then I think all of us would join in that kind of an effort.

The fact of the matter is this amendment, even if it were meaningful—I will briefly describe it to you—would have absolutely the opposite effect if you knew what was included in this $400 million loan to Mexico.

First of all, it has been said that the World Bank has been used to develop Mexican steel. That is not the case with this loan. It is not a loan to develop Mexican steel, but rather to improve the quality of their steel.

Let me tell you what the Mexicans have agreed to as a result of the negotiations over this loan.

One, Mexican officials have been and are willing to cut even further tariffs on steel imports which is vitally important to United States steel interests as a result of this $400 million loan agreement.

Second, officials have agreed to stop subsidizing their steel industry over the course of this loan, something we have been trying to get them to do for years. They have agreed to do it as a result of this loan.

Third, the loan is not designed to increase Mexico's steel. A unique feature was included in this particular loan agreement. That is built into this which would allow the package to make sure no additional economically unsound expansion of Mexico's steel industry occurs during this particular period.

All of these things we have been trying to get for years from Mexico. As a result of tough negotiations for this loan we were able to get those concessions. In fact, the U.S. steel industry will be assisted by this particular proposition.

My colleague from New Jersey is absolutely correct. We have an interparliamentary meeting beginning 48 hours from now which this Senator chairs with a group of Senators and Congressmen from Mexico in New Orleans as we do every year. We are going to go down there and we are going to fight to get them to be more supportive of our interests in drug interdiction, we are asking them to be more supportive about expanding and opening up Mexican markets for United States investment, we are asking them to be more supportive to pay back those loans on the debt that they have incurred, and they are going to have to be tough with their own people.

How do you expect us to go down and try to convince them to be supportive of us? We are going to ask them as well to help us out with Noriega in Panama.

How willing do you think they are going to be to help us on those things when the U.S. Senate passes a meaningless resolution for domestic political consumption which in fact will hurt the U.S. steel industry? How do you explain that? That is exactly what we are doing. Tonight if you want to be helpful, if you want to send a good message to our colleagues to the south, and our colleague from New Jersey is absolutely correct, Mexicans are only going in one direction. It is a desperately poor country. It is on its knees. It needs help.

If you want to beat Marxism, if you want to take on the Communists in Latin America, we have heard more speeches about that, then let us do something to help these countries struggling with it; not turn around and give the speeches about Marxism and then cut off a loan that tries to help Mexico when it is in trouble.

So I would urge my colleagues tonight to vote against this resolution and to do something sensible for once, and not try to interfere with every decision the World Bank makes when in fact they negotiate a loan that is in our interests.

I yield to my colleague from Kansas.

Mrs. KASSEBAUM. Mr. President, time is running for those of us who wish to speak in opposition. I would like to associate myself with the remarks of the Senator from Connecticut.

I understand the frustration of those who initiated this resolution but it is a serious mistake I think for the U.S. Senate to go on record trying to dictate, regardless of the merits of the issue the World Bank will do in their vote for or against, individual votes taken at the World Bank. It places us in a difficult position.

I think the Senator from Connecticut has stated it very well.

I yield.

Mr. DODD. Mr. President, I yield to the Senator from the State of Washington.

The PRESIDING OFFICER. The Senator from Washington.

Mr. EVANS. Mr. President, I join with the Senators from New Jersey, Connecticut, and Kansas in opposing this resolution. I am appalled at the

cant economic disruption and employment losses due to increased foreign competition;

(2) the United States steel industry has lost more than 12 billion dollars, more than half its workforce, and closed scores of plants throught out the country;

(3) in order to regain its competitive posture, the United States industry has invested more than 8 billion dollars on modernization, obtained painful wage concessions from its remaining workforce, and slashed production capacity by one-third;

(4) there are more than 200 million excess tons of steel capacity worldwide, causing severe financial strains on steel industries in many countries;

(5) the proposed loan by the International Bank for Reconstruction and Development (hereafter referred to as the "World Bank") would provide Mexico's steel companies with subsidized financing to further the glut of worldwide steel production;

(6) the proposed loan could do irreparable damage to the United States steel industry. Therefore, it is the sense of the Senate that the proposed loan is not in the best interests of the United States or in the best interests of Mexico's own economic revitalization; and the World Bank should reject the proposed loan.

Mr. METZENBAUM. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. METZENBAUM. Mr. President, this sense-of-the-Senate resolution, which is an amendment to the pending bill, arises by reason of the fact that within the last 3 or 4 days we learned that the World Bank intends to approve a $400 million loan to the Mexican Government for the development of steel. Frankly, we had no prior notice of that. When we learned about it, we discussed the matter with Jim Baker this morning in the leader's office and Jim Baker agreed that the United States would vote "no" in connection with the approval of that loan.

Some of us subsequently today spoke with Mr. Barber Conable, president of the World Bank, and urged him not to go forward with this loan.

There are unemployed steelworkers in Ohio, Pennsylvania, West Virginia, Texas, and almost every State in the country.

Approval of $400 million to develop the steel industry in Mexico to compete with the steel industry in America is difficult for this Senator to undertand. We have already heard from the American Iron and Steel Institute indicating their concern and objection—from U.S. Steel, from Inland, Bethlehem, and LTV.

There is at this moment 200 million tons of excess steel capacity worldwide. Why we would under those circumstances want to help Mexico develop a steel industry to compete with American steel is difficult for me to understand.

Let me make it clear. It is not out of a lack of concern or affection with respect to Mexico. We want to see Mexico's economy strong. We want to continue the good trade relationship that we have with Mexico. But it is not logical. It is not right to take the American taxpayers' dollars, because we pay about 20 percent of the $400 million, to take the American taxpayers' dollars and make them available to the Mexican Government to develop a competitive steel industry.

Mr. President, I reserve the remainder of my time. At this point I yield 1 minute to the Senator from West Virginia,

Mr. ROCKEFELLER. I thank the Senator from Ohio.

Mr. President, I join the Senator in my stunned reaction to this proposal by the World Bank. I also thank Secretary Baker for agreeing to vote against this matter, but, unfortunately, it probably will not do any good.

It is appalling to me, first of all, that the Senate did not know about this. Also appalling to me is the insensitivity of the administration these last several years not only to the steel industry as a whole but especially to the unemployed steelworkers in this country.

My vote has nothing to do with Mexico itself. It there were any country to which the World Bank was considering a loan in order to help its steel industry, I would be opposed. I would join a resolution to fight it. Our steel industry has not come back. Weirton and Wheeling-Pittsburgh Steel for example still have a long way to go. This resolution ought to pass and the World Bank ought not to make this loan to Mexico for the purpose of competing with the American steel industry.

I thank the Senator from Ohio for yielding.

The PRESIDING OFFICER. Who yields time.

Mr. HEINZ. Mr. President, I yield 1 minute to the Senator from Texas.

Mr. GRAMM. Mr. President, I am struck by the fact that we are here, after the horse is out of the barn, talking about money that is loaned to Mexico to develop the steel industry—that is in competition with our own—when we have people out of work.

We have had numerous other opportunities when we were voting on the World Bank to do something about this problem. In fact, when you let other people loan your money, you lose control. I hope those who are outraged by what is happening here tonight will remember that the next time we vote on World Bank authorization and appropriations. That is the time to do something about the problem. What we ought to be doing is not letting other people lend the American taxpayers' money, because when they do it, we do not have control over it.

Mr. HEINZ. Mr. President, I yield 1 minute to the Senator from Pennsylvania.

Mr. SPECTER. I thank my distinguished colleague.

Mr. President, this movement is very surprising in light of the fact that there have been repeated assurances from the administration, including the Secretary of the Treasury, that there would not be United States acquiescence in loans of this sort which unfairly compete with U.S. industry.

I put this question to the Secretary of the Treasury: Why should a Pennsylvania steelworker pay taxes to the U.S. Government, which in turn makes advances to the World Bank, which then makes loans to a country like Brazil or Mexico in this instance, which then uses those loans to subsidize steel which comes back into the United States and puts that Pennsylvania steelworker, who paid the taxes, out of a job?

It is just fundamentally unfair and this resolution ought to be passed and these practices ought to be stopped.

I thank the Chair, and I thank my colleague.

Mr. HEINZ. Mr. President, if there are no further requests for time on this side, I will make one comment.

Mr. President, there has been a lot of debate about this matter, and I am pleased to join with the Senator from Ohio in supporting his resolution. Maybe the authorities at the World Bank should consider, if they are determined to go ahead with this loan which will put still more American steelworkers out of work, extending such loans to those unemployed steelworkers and others on the same generous terms of 3 years to pay with interest rates about half what they could get if they were lucky.

Mr. BRADLEY addressed the Chair.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. BRADLEY. Mr. President, I would like to make four points.

The first is this amendment has no impact on the loan that will be authorized tomorrow. It has no impact.

The second point is, do we really want to start voting on every loan that is made by the World Bank? Do we not have enough things to vote on?

The PRESIDING OFFICER. The Chair will interrupt the Senator from New Jersey. On whose time is the Senator speaking?

Who yields time?

Mr. STEVENS. Who has time in opposition?

Mr. CRANSTON. Mr. President, is not time equally divided in some fashion?

The PRESIDING OFFICER. Time is controlled by Senator DODD, Senator HEINZ, and Senator METZENBAUM.

Mr. HEINZ. Mr. President, parliamentary inquiry. Is it not that the time in opposition is controlled by Senator DODD?

The PRESIDING OFFICER. There is no time in opposition. The time is allocated to three Members.

Mr. METZENBAUM addressed the Chair.

Mr. BRADLEY. Mr. President, I ask unanimous consent that I may continue for 1 minute.

The PRESIDING OFFICER. Is there objection?

sence. We know that. Why is it that we not consider that and vote on that, and then those Members wishing to decide whether or not we can arrest the other Senators can talk about that?

But in the meantime, while we are considering whether we can arrest each other, why do we not talk about something else? Why do we not talk about the principle of holding all of us hostage here while we wait around 5 hours, 6 hours, 7 hours to vote on the Intelligence matter?

I see no reason not to take the intelligence issue up first, and then those who wish to discuss this sensitive matter can debate it.

I see no reason in having us wait all day and all evening tomorrow night, holding us hostage so we can have that one final vote on the Intelligence Committee authorization.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. BYRD. I ask for 3 additional minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, the distinguished Senator from Arkansas makes a very plausible proposal on the surface, but there are some things involved here that we have considered. I would like to have done that first. I would have liked to have gone to the Intelligence Committee authorization first. That occurred to me also. But I happen to know that there is going to be at least 5 hours of debate. I say there will be at least 4; 1 hour will be under my control. I would hope that Senators would let us proceed as I have suggested because, in this way, we will not be in long tomorrow evening, and we will not be in much longer this evening.

We have one vote on the Metzenbaum amendment. That vote is already set. We have one more vote on the Metzenbaum amendment, and then tomorrow we will complete action on this bill. We will not stay in too late tomorrow evening. We can finish the other bill either tomorrow evening or the next day, and do the nomination, lay down Price-Anderson, and go home.

Mr. PRYOR addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. PRYOR. Mr. President, parliamentary inquiry. Is there a time certain for when the debate will end and passage of the pending matter?

Mr. BYRD. There is not a time certain. We do not know what time the final vote will occur on the pending matter. The 5 hours begin running on the disposition of the pending matter.

The PRESIDING OFFICER. Is there objection?

Mr. EXON. Reserving the right to object.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. EXON. Mr. President, I do not wish to complicate a difficult job any more than I have already. So I make a suggestion that might speed the process.

As I understood it, the unanimous-consent request just put to the body was that there be 3 amendments and 3 amendments only regarding the bill before the Senate, and they would be debated and taken up tomorrow, is that correct?

Mr. BYRD. Yes.

Mr. EXON. May I suggest that those who want to offer those amendments be allowed to do so this evening, and debate them this evening, and any rollcall votes that are required on any of those three amendments be stacked for an appropriate time.

There will be an agreement between the majority and minority leader. It seems to me that will save an awful lot of time tomorrow.

Mr. BYRD. Perhaps the distinguished Senator was not on the floor. That was the request I made just a few minutes ago, and the distinguished Senator from Texas did not feel disposed to agree with that.

Mr. EXON. I am appealing to the good sense and judgment of our respected friend from Texas. I listened to what he had to say. He said he wanted to review the voting today on the bill. We can dispose of that in a great hurry by having the Parliamentarian, through the Chair, explain to all of us what happened today. I think we already know that.

I do not happen to buy the argument realistically that we need to wait overnight to work this matter out. I would just appeal to my colleague from Texas to expedite the procedure and let those who want to offer their amendments, which I think are in order, to speed things along, and let us not put that over on top of everything else we have to do tomorrow and the following day.

Mr. GRAMM. Would the distinguished majority leader yield?

Mr. BYRD. Yes, I yield.

Mr. GRAMM. I would just like to remind my colleague that under the rules of the Senate in a postcloture situation, any germane amendment that has been filed is in order. We have limited all of the amendments that are currently at the desk. We have limited ourselves to only three that can be offered. We have said on those three that there be 5 minutes on each side. We have already started the process of going back and looking at what has been filed and trying to pull it down to a total of three.

I think, quite frankly, we are trying to save everybody time. There is always the possibility that they will not be offered. We have spent more time here discussing all this than we possibly are going to save tomorrow and, in my view, the leadership has worked it all out. We ought to do it and go home tonight.

Mr. BYRD. Mr. President, how many amendments are at the desk that are filed for postcloture?

Mr. SIMPSON. Mr. President, there are 140.

The PRESIDING OFFICER. The Chair is informed there are about 120-plus amendments.

Mr. BYRD. Mr. President, I would appeal to Senators. I assure my friends, I can understand their frustrations, but the distinguished Republican leader and I have gone over this, and I think this is the very best arrangement that could be possibly hoped for. I would hope that Senators would not object to this.

The PRESIDING OFFICER. Is there objection?

Mr. PRYOR. Mr. President, reserving the right to object——

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. PRYOR. Mr. President, if I may inquire of the Chair, has a time agreement been reached on the amendment by the Senator from Ohio?

Mr. METZENBAUM. Fifteen minutes.

Mr. PRYOR. Fifteen minutes, 7½.

The PRESIDING OFFICER. Has the question of the Senator been answered?

Mr. PRYOR. I thank the Chair. I think the question has been answered.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. BYRD. Mr. President, I thank all Senators.

The PRESIDING OFFICER. The Senator from Ohio is recognized under the previous rule.

AMENDMENT NO. 1621

(Purpose: To express the opposition of the Senate to the proposed $400 million World Bank loan to restructure Mexico's steel industry)

Mr. METZENBAUM. Mr. President, I send an amendment to the desk on behalf of myself, Senator HEINZ, Senator BYRD, Senator DOLE, Senator SHELBY, Senator HOLLINGS, Senator ROCKEFELLER, Senator GLENN, Senator DIXON, Senator HEFLIN, Senator DURENBERGER, and Senator NICKLES, and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Ohio [Mr. METZENBAUM] proposes an amendment numbered 1621.

Mr. METZENBAUM. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the committee amendment add the following new section:

"SEC. . MEXICO STEEL LOAN.

The Senate finds:

(1) during the past decade the United States steel industry has witnessed signifi-

So the motion to lay on the table amendment No. 1620 was agreed to.

Mr. KENNEDY. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. REID. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from West Virginia, the majority leader, is recognized.

The Senate will be in order.

Mr. BYRD. Mr. President, I believe under the order previously entered, Mr. METZENBAUM is now to be recognized to call up his amendment. I ask unanimous consent that I may proceed for not more than 3 minutes, prior to the Senator's being recognized.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, earlier an order was entered whereby beginning tomorrow at 9 o'clock, there would be 5 hours of debate on an extraneous matter prior to the vote on cloture.

I ask unanimous consent that, with respect to the time limitations in connection with that extraneous matter, that order remain as was, but that the discussion of the extraneous matter follow, rather than precede, final action on the pending measure.

The PRESIDING OFFICER. (Mr. LEVIN). Is there objection? Without objection, it is so ordered.

Mr. BYRD. Mr. President, this would mean that tomorrow morning the Senate would proceed with further votes on amendments to this matter and cloture, if there be further votes on amendments.

Now, Mr. President, it is my understanding that there are two, possibly three amendments, that remain on the other side of the aisle to be called up. Let me put the request.

First of all, I ask unanimous consent that on the not more than three remaining amendments, that there be a time limitation on each of those amendments of 10 minutes to be equally divided and controlled in accordance with the usual form; that no amendment to any one of the amendments be in order; provided further that the amendments be discussed this evening and that the votes be stacked for tomorrow morning, beginning at 9:30 a.m., and that the first rollcall vote be a 30-minute rollcall vote; that the time on each of the two succeeding amendments be limited to 10 minutes each in view of the fact that they would be stacked and back-to-back votes; that the vote on cloture then immediately occur, that if cloture is invoked the Senate then proceed immediately to the vote on final passage of the bill without further amendment or debate or motion of any kind, and that the motion to reconsider—that there be no debate on that motion, and that paragraph 4 of rule XII be waived.

Let me put that request for the moment.

Mr. GRAMM. Reserving the right to object, Mr. Leader, there are amendments that have been filed that meet the germaneness rule. I think those of us who have been concerned about the bill have had some amendments adopted by unanimous consent that have not been debated. I think we would like to go back and look tonight and in the morning at where we stand on the bill. It would be very difficult tonight to decide whether to go forward with any additional amendments without going back and making that review.

Mr. BYRD. I understand what the distinguished Senator is saying. I withdraw that request. Let me present another request.

Mr. President, I ask unanimous consent that there be no more than three amendments in order after this evening, that those three amendments be the type of amendments that would be in order postcloture, that the amendments each be limited to 10 minutes to be equally divided in accordance with the usual form, that at 9:30 a.m. tomorrow the Senate vote on cloture, that that be a 30-minute rollcall vote with the call for the regular order to be automatic at the conclusion of the 30 minutes and that, upon the disposition of the not more than three amendments, all of which are to be amendments that would qualify under the rules postcloture, the vote then occur on final passage immediately without further amendment, debate, or motions—let me modify the request. Following the disposition of the three aftermentioned amendments, there be 20 minutes of debate to be equally divided between Mr. KENNEDY and——

Mr. GRAMM. Mr. Leader, could we have that on each side? I know there will be four or five people on this side.

Mr. BYRD. That there be 40 minutes to be equally divided on the debate following the three aforementioned amendments; the time to be equally divided in accordance with the usual form; that the vote then occur without further motion, amendment, debate, action of any kind on final passage; no time on the motion to reconsider and upon the final disposition, therefore, of the bill; that the 4 hours of debate to be controlled by the distinguished Republican leader, 1 hour to be controlled by this Senator on the extraneous matter, occur; after which 4 hours, plus 1, if all time is used or upon the yielding back thereof, the Senate proceed immediately to the consideration of the intelligence authorization bill.

Mr. PRYOR. Mr. President, reserving the right to object.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. PRYOR. And I hope I will not object. I may.

Mr. President, am I to understand from the majority leader and the distinguished acting Republican leader that we are going to have probably one more rollcall vote this evening on the sense-of-the-Senate resolution offered by the Senator from Ohio, Senator METZENBAUM; then we will come in tomorrow, have votes, probably three or four on this legislation now pending, and then have a 4-hour special order——

Mr. BYRD. Actually, it amounts to 5.

Mr. PRYOR. A 5-hour special order; that is what it amounts to. And then after that, we will have probably a vote on the Intelligence Committee authorization?

Mr. BYRD. Yes.

Mr. PRYOR. If this is true, I object.

Mr. BYRD. Mr. President, I hope the Senator will not object. May I point out that if the Senator objects, the Senators over here can take time on this bill. There is nothing to keep them from it prior to cloture. They can take time on this bill after the Pastore rule has run its course on the morrow, and they can take, not only 4 hours, they can take 6 hours, 7 hours, 8 hours of time under the rules of the Senate.

I would like for this cup to pass from me, but it is not going to. There are Senators on this side who want to say some things, and they are entitled to that. I suppose, I do not know, I may have to say a few words myself. I will try to restrain myself as much as possible. But I hope the Senator will not object because this really is something that has been worked out laboriously and in the long run it will save the time of the Senate; I assure the Senator of that.

Mr. SIMPSON. Mr. President, I think there is one other element that might be helpful to the Senator from Arkansas, that if we do not finish tomorrow with the intelligence authorization, we will deal with that Friday morning. There is no question that we will finish it then. We will also have a rollcall vote Friday morning on the Executive Calendar, William F. Burns. So I would think that if we are allowed to go forward like this, we will finish our work on—maybe not likely at all tomorrow night on the intelligence authorization, and go out at a reasonable hour, I would trust tomorrow evening, and then Friday deal with the intelligence authorization and then complete that in midafternoon and go on with laying down—or if it is the majority leader's intention to lay it down—the House version of Price-Anderson.

Mr. BYRD. Price-Anderson.

Mr. PRYOR and Mr. EXON addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. PRYOR. Mr. President, I would like to ask the leaders and the managers of this bill if it is conceivable that a slight amendment may be made. That is, before we get to the "sensitive extraneous matter," the 5-hour special order, that we do the Intelligence Committee legislation. It is of time es-

military departments, the Director of NSA. That is nice.

We are at 20 minutes to 9, and this is the third attempt to try to deal with preemployment testing. We know that genesis of this. We establish under DOD and NSA careful kinds of reviews, where a polygraph is part of a range of different investigative techniques, where people are trained well, are limited to two tests a day, and it has value. But to try to take that thought and graft it on to this program, at this hour of the night, makes no sense whatever.

I reserve the remainder of my time.

Mr. GRAMM. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator from Texas has 2 minutes remaining.

Mr. GRAMM. I yield myself 1 minute.

Mr. President, the distinguished Senator from Massachusetts is so concerned about the Federal Government reaching down into the private sector and setting standards that he wants to outlaw tests altogether.

This amendment simply takes the highest standards set by the Federal Government and says that if the private sector complies with those standards, it still has to meet all existing State standards. But we are defining the highest level of Federal standards in terms of application, in terms of the test and qualifications of those administering the test.

So we have a pure and simple vote here on State's rights. The Federal Government can set the standards that have to be applied in the private sector, but the States determine whether the private sector can use those standards to administer the test.

The argument that this is overreaching by the Federal Government, when the bill denies the ability to use tests for prescreening, period, I think is disingenuous.

I yield 1 minute to the distinguished Senator from Indiana, and I reserve the remainder of my time.

Mr. QUAYLE. Mr. President, this amendment is very straightforward. It is basically an antidouble standard amendment. We have two different standards, one for the public sector and one for the private sector.

We have heard all along the Senator from Massachusetts and others saying, "We don't want those $15 polygraphs. We don't want those fly-by-night polygraphers in there."

Well, we are not going to have it with this amendment, because they have to meet the very high standards that you have to have to a polygrapher for the Government. We are saying it is ok to do it for the Government if you meet certain high standards.

We are saying, OK, we will meet those standards. We will have the high tests. We will have the high caliber. And then we are going to say if you met those standards, it is OK to do it for the Government. Then it will be all right to do for the private sector.

This gets away from the double standard that is in this legislation. It is a very straightforward situation. It gets to the point where we are going to do away with the $15 polygraphs and have the high-class ones which they say is OK.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. KENNEDY. As much as the Senator from Indiana and the Senator from Texas would like to believe it, the amendment does not do it. It refers to the directive. The various provisions that are followed in the DOD and NSA are here in the regulations and standard operating procedures.

Now, the fact is the members of the Army and the military forces ought to be doing other things than training guards and security officers for Stop and Shop and Wal-Mart.

You have it right there, and it just says it authorizes the use. Here you are going to have it.

I mean, let us be realistic. We understand that the Department of Defense having reviewed this and studied it has established procedures which they think are important and useful in terms of important national security questions.

We know that is considerably more than even is required in the special circumstances of this bill.

And, Mr. President, I am surprised quite frankly at two members of the Armed Services Committee who are familiar with this issue. I have been in the deliberations on this issue on that committee conference report. We have debated and discussed this issue with the Senator from New Mexico about the numbers that we are going to permit in terms of it. And to make light of this kind of a procedure, I think, is unfortunate indeed.

Mr. President, I move to table the amendment, and I ask for the yeas and nays.

Mr. GRAMM. Do I not have a little time left, Mr. President?

The PRESIDING OFFICER. The time of the Senator from Texas has expired.

Mr. GRAMM. Mr. President, I send a modification of the amendment to the desk.

Mr. KENNEDY. Mr. President, I move to table——

Mr. BYRD. Mr. President, there was action taken on this amendment by virtue of the time agreement.

Mr. KENNEDY. I move to table.

Mr. BYRD. The Senator needs unanimous consent to modify the amendment.

The PRESIDING OFFICER. The Senator needs consent to modify.

Mr. KENNEDY. I move to table amendment.

Mr. GRAMM. I ask for the yeas and nays.

The PRESIDING OFFICER. The Senator's motion to table is not in order.

Mr. KENNEDY. I yield back the remainder of my time and move to table and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is now on the amendment.

The yeas and nays were ordered.

Mr. KENNEDY. I move to table.

The PRESIDING OFFICER. The motion to table is now in order.

The question is on agreeing to the motion to lay on the table the amendment of the Senator from Texas.

On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Tennessee [Mr. GORE], the Senator from Iowa [Mr. HARKIN], the Senator from Hawaii [Mr. INOUYE], the Senator from Illinois [Mr. SIMON], and the Senator from Mississippi [Mr. STENNIS], are necessarily absent.

I also announce that the Senator from Delaware [Mr. BIDEN], is absent because of illness.

Mr. SIMPSON. I announce that the Senator from Kansas [Mr. DOLE] and the Senator from Idaho [Mr. SYMMS], are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 57, nays 35, as follows:

[Rollcall Vote No. 40 Leg.]

YEAS—57

Adams	Dodd	Melcher
Armstrong	Domenici	Metzenbaum
Bentsen	Durenberger	Mikulski
Bingaman	Evans	Mitchell
Boren	Exon	Moynihan
Boschwitz	Ford	Packwood
Bradley	Glenn	Pell
Bumpers	Hatch	Proxmire
Burdick	Hatfield	Reid
Byrd	Heinz	Riegle
Chafee	Hollings	Rockefeller
Cohen	Humphrey	Sanford
Conrad	Johnston	Sarbanes
Cranston	Kennedy	Sasser
D'Amato	Kerry	Shelby
Danforth	Lautenberg	Specter
Daschle	Leahy	Stafford
DeConcini	Levin	Weicker
Dixon	Matsunaga	Wirth

NAYS—35

Baucus	Helms	Pryor
Bond	Karnes	Quayle
Breaux	Kassebaum	Roth
Chiles	Kasten	Rudman
Cochran	Lugar	Simpson
Fowler	McCain	Stevens
Garn	McClure	Thurmond
Graham	McConnell	Trible
Gramm	Murkowski	Wallop
Grassley	Nickles	Warner
Hecht	Nunn	Wilson
Heflin	Pressler	

NOT VOTING—8

Biden	Harkin	Stennis
Dole	Inouye	Symms
Gore	Simon	

closing. The reason is the possible passing of bill SB 1904.

Please permit me to explain.

If all people were honest and told only the truth, polygraphs would never be necessary and I would have no dilemna. But although I have interviewed at least 30,000 applicants (out of over 40,000 applications)—there is absolutely no way for me to judge who is telling the truth and who is not.

So many applicants will tell you with great conviction that they are telling you the truth; yet thoroughly lie. I have personally seen it again and again and again—so many times!

This is why there is absolutely no way to bring in honest, drug-fee employees without a polygraph program!

About 90% of all applicants who apply for employment with us have used illegal drugs. This is the prime reason for our polygraph policy.

I fully understand that not all examiners are equal, and yes, errors are made (in my experience, however, less than one percent). But using polygraph examiners is costly, so I have investigated every other possibility for determining truthful answers on applications.

Nothing comes close.

Some people who oppose polygraphs have not experienced first hand what I have seen in my 25 years of its use. I know both the good and the bad. And the good, and the potential good, far outweighs the bad.

Wouldn't it be a wise idea, then, for our government to direct efforts toward improving the best method that exists now to screen out cocaine sellers, cocaine users, and people who regularly steal or harm others?

Alternative methods like putting people in jail have not worked too well in reducing sales of drugs yet. Law enforcement agencies have also spent enormous sums of money and manpower, but drug use is still strong.

However, our local police and sheriff departments spend a lot of time and effort in conducting background investigations on applicants, but still use polygraph examinations; becaue it's worth it to them. So why not permit private industry to continue to do the same—we generally see excellent results every day. The expenses are ours alone.

Look at the damage firearms do. If we permit almost anyone in America to possess firearms for protection, why can't business be allowed to continue to use polygraph for its protection? It certainly is less damaging.

Complaints have come from some who have been examined. It is, of course, true, that this certainly must be addressed. There is no question that examiners who are not fully qualified should be given the opportunity to improve or be removed. Twenty years ago, physicians made more mistakes than they do today. They have been practicing medicine for how many years—1000, 2000? Polygraphs run about 97% accuracy, nationwide, but how old is their profession—60 years, 40 years? Why not ask the industry to raise its standards?

Then it would be easier to take a look at another side of the coin. Question those who have been examined and are pleased. Consider the failures, but also explore the successes.

Ask our own employees what they think about polygraphs. I invite you to come and ask each and every one if they would prefer for us to give up our polygraph program.

Ask employees of other businesses all over America who use the polygraph also—service stations; drug, convenience and department stores; hotels and motels; super market, insurance and trucking companies; banks—would they like polygraphs discontinued?

Our reason for the polygraph is very simple, but serious. You fly and drive in from all over the world to eat with us, and we are responsible to have the nicest employees serve you the best food. When you tour our facilities and speak with our employees, we want you to enjoy yourself. People continuously visit our kitchens and often comment on the niceness of our employees.

In fact, many applicants have applied to us because of our reputation for being a nice place to work. Our restaurant is like a family, and my job is not only to please our customers, but also to provide my employees with a safe and enjoyable place to work. Hot stoves, hot fryers, and kitchen work pressures are not conducive for an employee to come to work "high" on drugs or alcohol. Many employees have worked with us for over 20 years, and I have a definite obligation to them to employ other honest, drug-free, quality people to work alongside them. That does not mean discrimination. We just prefer to employ only nice people like you would like to hire yourself—like a babysitter or maid who you would willingly trust to leave in your home when you were not there.

If you could experience the hundreds of times that the polygraph saved us grief, you probably would also agree to enhance it; not destroy it. Like the applicant for our farm who had already "raped two women" (unknown to the law, and not mentioned in his application, who acknowledged this during the pre-employment polygraph examination). My wife and young son and daughter worked on our farm at this time (we raise vegetables for our restaurant).

Another applicant's daytime employment was to dispose ("get rid of") murdered, dead bodies (a factual case, but also not mentioned in his application).

And the lovely young applicant, who was awaiting trial for possession of 24 pounds of marijuana, denied any contact with drugs in her application.

Another applicant had been a "paid assassin." (He had never mentioned that in his application either.)

The above may be extreme examples, but these come to mind quickest. Most applicants lie about their involvement with drugs. (All who take our polygraphs have already been screened and interviewed first and seemed fine.)

Let's consider the positive side. I am very proud of the fact that I have helped many people give up drugs—or certainly reduce its use. Our polygraphing has been a great assistance in helping our employees improve themselves, and many who were not employed because drug use gave it up and returned to be hired later. Being able to ask them, "may we check you again?" permits this idea to work. The ability to give them a second chance is made possible only because of the polygraph program.

We have hired many employees who promised to never use illegal drugs again, and many did stop.

Wouldn't it be a great boon if all employees used polygraphs as we do? Drug use would have to decease.

A work environment where all employees are polygraphed has to be the best work environment there is; not only do you feel much safer in it, but once you pass the polygraph, you are a prouder person because of it. If you could show me a method that works better than polygraph to help me hire better quality employees without discrimination, I certainly would use it.

Please oppose bill SB 1904, and allow us to employ only honest, drug-free people. Please do not destroy the best tool many of us have for providing you, our customers, with quality employees.

I know that you and our other legislators and government officials work in the best interests of every citizen, and I thank you for permitting me to share my experiences and thoughts with you.

Very respectfully yours,

BERN LAXER.

Mr. GRAHAM. Mr. President, I have been looking for this amendment. I am pleased that my colleague and namesake from Texas has offered it.

I urge that those who accept the need for Federal involvement in standards also be receptive to the fact that there is legitimate concern on the part of employers to be able to utilize for their own interests, where their interests coincide with the interests of the prospective employee, in being honest, fair, reliable, and credible, to be able to use this as a piece of information. I suggest that the standards set out in this amendment by the Senator from Texas achieve that purpose, and I urge its adoption.

The PRESIDING OFFICER (Mr. PRYOR). The time of the Senator has expired.

Mr. KENNEDY. I yield myself 5 minutes.

Mr. President, if I may have the attention of the Senator from Texas, we have heard a lot of amendments around here, and this is the most cockamamy amendment we have seen during this whole debate. This is what he has said:

> Nothing in this act shall prohibit an employer from administering a polygraph test to an employee or prospective employee if the test is administered in accordance with Department of Defense directive. . . .

Who is going to decide, Mr. Private Company, what your polygraph test is going to be? It is going to be the Inspector General, the Department of Defense, authorized use of polygraph examinations.

You talk about the Federal Government and the private sector. You are going to have the Secretary of Defense, the IG, the Department of Defense, right here—authorizing the use of polygraph examination.

Do you want to know what the training program is going to be? Page 7: The Secretary of the Army shall establish a manager retraining program.

Boy, you talk about the Federal Government reaching right down in terms of the private sector. What in the world are we doing?

The interesting point is that this is not even what DOD uses. DOD uses this along with the regulations and the standard operating manual procedures. That is not the whole program. You want the long arm of the Federal Government deciding, in every one of these private industries, what they are going to do about polygraph training, waivers. There are 2 million tests a year in the private sector. You want a waiver. Who do you go to? You go right down to the Secretaries of the

Mr. GRAMM. Excuse me. I just remembered the distinguished other Senator GRAHAM wants to speak on this as well.

Mr. KENNEDY. That is all the more reason to keep it to 10 minutes.

Mr. GRAMM. We could have 10 minutes. If the distinguished Senator from Massachusetts wants 5 minutes, we have no objection.

Mr. KENNEDY. That is awfully nice. Mr. President, I am always glad to hear both of my good friends and colleagues. If they make an overly persuasive case, let us do it 20 minutes equally divided, and I will try to move it along.

Mr. BYRD. Mr. President, I ask unanimous consent it be 20 minutes equally divided on this amendment, with no amendment in order thereto. Does this accommodate the distinguished Senator from Florida?

Mr. GRAHAM. Yes, it does.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, I ask unanimous consent that I may proceed for 2 minutes without the time being charged.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, Mr. METZENBAUM plans to call up an amendment this evening.

Mr. President, I wonder if we could agree, if the Senator would agree, on a 10-minute limitation on the amendment by Mr. METZENBAUM, 5 minutes to Mr. DODD and 5 minutes to Mr. METZENBAUM.

Mr. METZENBAUM. No objection.

Mr. DODD. I have no objection to that.

Mr. BYRD. Mr. President, also 5 minutes to Mr. HEINZ; with no amendment in order to the amendment.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. BYRD. Mr. President, I ask unanimous consent that the amendment by Mr. METZENBAUM follow the amendment by Mr. GRAMM.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

AMENDMENT NO. 1620

Mr. GRAMM. Mr. President, I have been so moved in listening to the passionate arguments of the distinguished Senator from Massachusetts that I have offered this amendment. This amendment takes the Department of Defense directive as to how a polygraph examination must be given and the provisions that govern those who administer the test. We have heard at great length as to how the Government is so efficient that they administer the test in 8 hours, and the private sector does it in 15 minutes, one of the miracles of American Government.

This amendment says that if the private sector follows the Department of Defense directive, that they then can use the polygraph as a tool to protect the young, to protect the airline passenger, to protect those that are in sensitive areas that might be affected negatively.

I ask my colleagues to look closely at this amendment. This amendment preserves States' rights, except that it sets the highest existing Federal standard for those who employ the lie detectors within the private sector. Remembering that over 40 States have already set out procedures, we preempt only those procedures in terms of the quality of the test and the quality of the tester, but we preserve the ability of the private sector to use such test in the interest of trying to promote the public welfare.

Mr. President, there is a great paradox that we exempt Government in this bill. We exempt those riding in the wagon. We say they can use the polygraph but the people that are pulling the wagon, earning the income, paying the taxes, making the whole Government possible are effectively precluded except under the most limited circumstances.

Perhaps the distinguished Senator from Massachusetts is right. Maybe the quality of private testing is inadequate. This deals with that problem. This is a States' rights issue with a Federal preemption which sets the highest standards that exist in the Federal Government on the testers and the test.

I urge my colleagues to support this amendment. I reserve the balance of my time. And after the distinguished Senator from Massachusetts has spoken, I will yield 5 minutes to the distinguished Senator from Florida.

The PRESIDING OFFICER. Who yields time?

Mr. GRAMM. Mr. President, I yield 5 minutes to the distinguished Senator from Florida.

The PRESIDING OFFICER. The Senator from Florida is recognized.

Mr. GRAHAM. Mr. President, I support the basic premise of this bill which is that there should be Federal standards, Federal conditions under which polygraphs are utilized.

I do not believe that requires an absolute prohibition or an absolute prohibition subject to industry-by-industry exception of employment of prospective employers. Our State of Florida, and a number of other States in this Union, have high mobility in their populations. In areas where it is virtually impossible to make a judgment based on community reputation, readily available other sources of information employers have found that the use of these examinations is an appropriate element of reaching the employment judgment.

I start from the premise that an employer who is already constrained by other provisions, and will be further constrained by the standards in this act from using these devices for discriminatory or other invidious purposes, is not going to be spending the money, taking the time, investing the effort, to have a polygraph administered, unless that employer feels that it has some value. It has significant value in many instances in reaching that preemployment decision as one element of the total information which an employer would utilize.

An employer bears a legal responsibility for the act of his employee. One important function the polygraph can serve is as a tool—and I underscore "a tool"—available to reduce the expense, the legal exposure, and the threat to other employees which the employment of a relatively unknown person requesting employment would be, where that use of the polygraph could be of assistance in identifying those who are inappropriate.

We have already recognized the appropriateness of preemployment use of polygraphs by the number of areas which have been expanded by amendments here today, in which we have provided an exemption, including an exemption to all Government employees.

I believe that by applying this highest standard available, the standard of the U.S. Department of Defense, to the applicator and the equipment used, we have protected the interests of those persons who would be the subject of a polygraph examination, but have made it available where the employer feels that it is a necessary and appropriate part of the information package in preemployment.

Mr. President, I have a letter which I have received from a leading firm in our State which is in the food business, a business that is not of the nature of high security, of nuclear powerplants or security guards, but a business which requires a high standard of its employees; a business that, under the best of circumstances, has a high turnover—in many of the communities in our State, we have heavy transit and tourist business, even more than would be true in most places in this Nation—has found that the use of polygraph is an important tool in reaching that decision.

Mr. President, I ask unanimous consent to have this letter, dated February 29, from Mr. Bern Laxer, of Bern's Steak House, in Tampa, FL, printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

BERN'S STEAK HOUSE,
Tampa, FL, February 29, 1988.

Hon. BOB GRAHAM,
U.S. Senate, Washington, DC.

DEAR SENATOR GRAHAM: My wife and I own a restaurant that employs 243 people and is considered by our city fathers to be an asset to our community. In fact, when a rumor reached one of the editors of our local Tampa Tribune that our restaurant was sold, the front page of the paper was held open until the editor located me to learn whether the rumor was true. Of course it was not. Yet my thoughts (for the first time in our 35-year existence) are to consider

The PRESIDING OFFICER. The Senator from Massachusetts has 2 minutes and 8 seconds.

Mr. KENNEDY. These are the qualifications that are so objected to: At least be 21 years of age, has complied with all required laws in the State, successfully completed a formal training course regarding the use of polygraph tests—we do not say what the test is—completed an internship for not less than 6 months, renders an opinion in writing, and maintains reports and records for a minimum of 3 years. These are the objectionable standards.

It is difficult for me to understand how intrusive the long arm of the Federal Government is in that area, that they be 21 years old and have 6 months of training and comply with State laws. We do not talk about the course. We say 6 months. You must render any opinion in writing.

If everybody thinks that is the long arm of the Federal Government, I find it difficult to understand.

Mr. President, I do not know how much time I have.

The PRESIDING OFFICER. The Senator from Massachusetts has 40 seconds; the Senator from Mississippi has 2 minutes 50 seconds.

Mr. KENNEDY. I reserve the remainder of my time.

Mr. COCHRAN addressed the Chair.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. COCHRAN. Mr. President, I am not going to prolong the debate. I think we have discussed the issue so that Senators understand what is being questioned here by this amendment. Frankly, I was hoping that we would get a majority vote in favor of the substitute that was offered in the form of the previous amendment, but we did not. We had 29 votes. Somebody changed their vote at the end.

But the fact is that was the better amendment. This amendment is targeted to one objectionable provision that bothers this Senator. Obviously, it does not bother a majority of the Senate, so I am not going to insist that we belabor this point. But I did want to make the point. I think we continue to make a mistake by substituting the judgment of Washington officials for that of State officials. That is the point I am making, Mr. President.

I yield back the remainder of my time.

Mr. KENNEDY. Mr. President, I will just take 30 seconds.

The kind of requirements that we have here are the minimum requirements of any court reporter in the country. Is that intrusive? It is difficult for me to understand why there be such objection. It is established in the Federal legislation. I understand and respect the objection of the Senator from Mississippi to this legislation, but I am prepared for a voice vote.

I reserve the remainder of whatever time I have.

The PRESIDING OFFICER. All time has expired. The question is on agreeing to the amendment of the Senator from Mississippi.

The amendment (No. 1617) was rejected.

AMENDMENT NO. 1618

(Purpose: To provide for national security exemptions)

Mr. GRAMM addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Texas [Mr. GRAMM] proposes an amendment numbered 1618.

At the appropriate place, add: "Nothing in this Act shall be construed to preclude the use of a lie detector test to any expert or consultant or any employee of such expert or consultant under contract with any federal government department, agency or program where a security clearance is required by the federal government for such expert or consultant and such expert or consultant, as a result of the contract, has access to classified and sensitive government information."

Mr. GRAMM. Mr. President, this simply corrects what I perceive to be an error in the bill. Contractors working for the Department of Defense and the Department of Energy, the National Security Administration, CIA, and FBI that are dealing with sensitive matters and subject to lie detector. This brings in such agencies as the Drug Enforcement Administration and the Nuclear Regulatory Commission. I understand the distinguished Senator from Massachusetts has no objection to the amendment.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, this has gone through a series of revisions, and I think is an acceptable amendment. I have no objection to it. I understand that the Senator from Utah has no objection to it. So I would support the amendment.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from Texas [Mr. GRAMM].

The amendment (No. 1618) was agreed to.

Mr. GRAMM. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. KENNEDY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1619

(Purpose: To provide a nuclear power plant exemption)

Mr. GRAMM. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Texas [Mr. GRAMM] proposes an amendment numbered 1619.

On page 28, between lines 14 and 15, insert the following new subsection:

"(e) NUCLEAR POWER PLANT EXEMPTION.—This Act shall not prohibit the use of a lie detector test by an employer on any employee or prospective employee of any nuclear power plant. This subsection shall not preempt or supersede any state or local law that prohibits or restricts the use of lie detector tests."

Mr. GRAMM. Mr. President, I am told that so clear is the argument for this amendment that the distinguished Senator from Massachusetts is willing to accept it.

Mr. KENNEDY. Mr. President, this is a very limited amendment targeted in a very specialized area which is of enormous sensitivity. I have really no objection to this amendment. I would urge the Senate to adopt it.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Texas [Mr. GRAMM].

The amendment (No. 1619) was agreed to.

Mr. GRAMM. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. KENNEDY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1620

(Purpose: To provide an exemption for use of polygraph tests administered in accordance with Department of Defense Directive 5210.48)

Mr. GRAMM. Mr. President, I sent an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Texas [Mr. GRAMM] proposes an amendment numbered 1620.

On page 28, between lines 14 and 15, insert the following new subsection:

(e) EXEMPTION FOR TESTS CONDUCTED IN ACCORDANCE WITH DOD DIRECTIVE.—Nothing in this Act shall prohibit an employer from administering a polygraph test to an employee or prospective employee if the test is administered in accordance with Department of Defense Directive 5210.48 published on December 24, 1984.

Mr. BYRD. Mr. President, would the distinguished Senator yield?

Mr. GRAMM. I am happy to yield.

Mr. BYRD. Would the Senator agree to a time limitation on this amendment?

Mr. GRAMM. It is my understanding that we have 10 minutes on each side. I would be willing to cut that down to 5 minutes.

Mr. KENNEDY. Let us keep the 10 minutes evenly divided.

The PRESIDING OFFICER. There is no time agreement on this, the Chair would advise.

Mr. BYRD. Could the Senator make it 10 minutes?

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Mississippi [Mr. COCHRAN] proposes an amendment numbered 1617.

Mr. COCHRAN. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Beginning on page 33, strike out line 10 and all that follows through page 35, line 7.

Mr. BYRD. Mr. President, if the Senator will yield, I ask unanimous consent that I may proceed for 2 minutes without the time being charged against the Senator from Mississippi.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. BYRD. Mr. President, I have been discussing this with the distinguished Republican leader. It would be that we vote on cloture, say, at 9:30 tomorrow morning, and then proceed to dispose of this bill before we have the lengthy discussion which we had earlier talked about, following which the Senate would take up the intelligence authorization bill.

In that way, Senators would not have to wait until 2 o'clock tomorrow to vote on cloture and we would put this lengthy discussion off until afterward, following the action on this bill.

The distinguished Republican leader may wish to respond now, but that is what I am proposing, if I can change the order.

Mr. SIMPSON. Mr. President, I think that might be acceptable to those of us on this side of the aisle. Nothing else would change with regard to the order, the 4 hours under my control and the 1 hour under the majority leader's control.

Mr. BYRD. Yes.

Mr. SIMPSON. And going to the intelligence authorization bill right after that.

Mr. BYRD. Yes.

Mr. SIMPSON. Then we would complete cloture and any amendments suitable under postcloture, and then go through the scenario, with the cloture vote at 9:30.

Mr. BYRD. Yes. The first thing tomorrow would be the cloture vote. Assuming that that cloture vote carries, of course, the pending business would be the pending business to the exclusion of all other business until completed, following which we would do the 4 hour—1 hour talkathon, mini talkathon.

Following that, we would go to the intelligence authorization bill.

Mr. SIMPSON. Mr. President, that is not being proposed now as a unanimous-consent request or an agreement. I would suggest that we go forward with the next amendment, and I will get the information for the majority leader.

Mr. DANFORTH. Mr. President, will the Senator yield?

Mr. BYRD. Mr. President, the distinguished Senator from Mississippi has the floor.

Mr. COCHRAN. I yield.

Mr. DANFORTH. With regard to the program for tomorrow, I think this might be a good occasion for us to think about stacking votes. Most of the votes we have had in the last hour or so have been following about 10 minutes of debate. It seems that Senators might be willing to stay around tonight and debate their amendments and then have them voted on tomorrow.

Mr. BYRD. I would certainly be happy to consider that. It may be that the amendments are running down pretty fast. I do not know how many remaining amendments there are. There is one by Mr. METZENBAUM. That may or may not be a voice vote.

Mr. METZENBAUM. It may not be. We are trying to see if we can postpone the World Bank amendment.

Mr. BYRD. Let us go forward with this amendment and we will find out.

Mr. COCHRAN addressed the Chair.

The PRESIDING OFFICER. If the Senator will suspend for a moment so that the record is clear, on this amendment there is a 10-minute time limit equally divided between the Senator from Mississippi and the manager of the bill.

Mr. COCHRAN. I thank the Chair.

Mr. President, the amendment I have sent to the desk is designed to delete a provision of the committee bill that provides authority to the Secretary of Labor to develop and promulgate Federal standards for licensing polygraph examiners.

The previous amendment I offered in the nature of a substitute assumed the Senate would probably vote to have a Federal preemption in the establishment by the Secretary of Labor of qualifications for polygraph examiners but I frankly did not like that.

As a member of the committee, I can remember the day that we reported the bill out; I was sitting there waiting for us to get a quorum to transact business, and I made the mistake of reading the bill. I probably would not be as troubled as I am tonight if I had not read it. But I found that the presumption the committee was making was that Federal decisions made here in Washington about the qualifications of polygraph examiners were of a higher quality than decisions made on the same subject by State government officials.

I just do not buy that. I think it is a mistake for us to assume bill after bill, program after program, that Washington decisions are necessarily better than State decisions.

In my State we have had a polygraph examiner bill on the books since 1968, and it has been working fine. But now, suddenly, the Federal Government decides that it can do it better.

I do not know that is necessarily true. This amendment simply says that the States should be allowed to establish their own criteria for licensing polygraph examiners. We do not have a Federal preemption on the licensing of medical doctors. We leave that up to the States. In profession after profession we leave to the States the decision as to who is qualified to do the job. Licensing is a matter of State law, and here we are departing from that principle, and I object.

I hope the Senate will vote for this amendment and go on record as giving credit to the careful, deliberate decisions that can be made by State governments in this area.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, the Senator has objected to establishing some reasonable standards in terms of the administration of the various polygraph examinations. I have in my hand what is established in terms of Defense, in terms of the CIA, in terms of the NSA, the most important agencies protecting our security. We are not requiring that. We are requiring less stringent standards.

If you accept this amendment, you are accepting what is done in a wide majority of cases, and that is the examiner gets the machine, they have very little training, and they are in business.

Now, either we are or are not serious about trying to ensure that there are some reasonable standards, not that we have the answsers to all of them. But what we have seen in the course of our hearings is the kind of instance I just described—a polygraph machine arrives in the warehouse; they take it out of the box; someone who has very little understanding either about the machine, the behavorial sciences or investigations, at least in many of the firms, goes out and performs the test.

Now, I do not know what would be the reasonable grounds. We did not try to insist upon the kind of training that is required by the DOD or by the CIA. In the kinds of circumstances that we permit it, we are not even requiring that the people have the kind of training we insist on at the national level.

What we are asking for is a reasonable amount of training and standards that will ensure that at least, if they are going to administer the polygraph, those who are administering it meet some reasonable standards.

Now, I believe, Mr. President, that is not an unreasonable kind of provision. As the committee testimony has pointed out, the greatest instances of abuse are when the polygraphers do not have that kind of training or standards.

Mr. President, how much time do I have remaining?

It has been shown that the selective use of polygraphs reduces consumer costs. This bill is going to outlaw it in many instances where it has been proven to save consumers and citizens of this country a great deal of money.

Mr. President, the Senator from Florida had asked me to yield him time. I am happy to yield to the distinguished Senator from Florida if he would like to be heard on this amendment.

I yield 1 minute to the distinguished Senator.

The PRESIDING OFFICER. The Senator from Florida.

Mr. GRAHAM. Mr. President, I have asked to see a copy of the Senator's amendment, which I have not had an opportunity to do. I am not certain that the amendment that is before us is the amendment that I wish to speak on. I wish to speak on the amendment that I understand you were going to offer which would allow preemployment testing.

Mr. COCHRAN. The amendment would do that, Mr. President.

Mr. GRAHAM. I understand you do it in a broad bill which essentially strikes at the principle of Federal regulation of polygraph tests as opposed to that one issue within the current bill, is that correct?

Mr. COCHRAN. Mr. President, if I can answer the Senator's question, if the polygraph is banned, it is banned by the States under the substitute which I have offered. The substitute does not ban polygraphs as a matter of law as the committee bill does. It leaves to the States the regulation of the use of polygraphs in the workplace. I think that is what the Senator from Florida supports.

Mr. GRAHAM. So I do not use your time under any false pretenses——

The PRESIDING OFFICER. The Senator from Florida's 1 minute has expired.

Mr. GRAHAM. Mr. President, I ask unanimous consent for an additional 1 minute.

Mr. KENNEDY. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator from Massachusetts has 1 minute and 50 seconds.

Mr. KENNEDY. I yield half of that to the Senator from Florida.

Mr. GRAHAM. To be fair to the Senator from Mississippi, the issue I wish to speak to and on which I hope you will have an opportunity to do so is the issue of the total prohibition which is contained in this bill on preemployment testing which I believe is excessive and which I believe denies employers in certain reasonable conditions and under appropriate standards a tool which they should have available to them, if they choose to use it, in a nondiscriminatory and acceptable procedural manner.

I do not support an amendment which would substitute total State control for reasonable Federal standards in this area. So I cannot take the floor on behalf of this basic amendment. I hope that there will be an opportunity before this debate is over to discuss the amendment which deals with the specific issue that is of concern to me.

Mr. KENNEDY. Mr. President, the Senator from Mississippi quoted some anecdotal evidence about certain industries, what was happening to them. I think it is perhaps useful, rather than quoting anecdotal evidence, to look at the evidence of the FBI in the areas of bank fraud, and embezzlement. Twelve States that have a total ban on polygraphs have 22.9 incidents per million of bank fraud, and embezzlement. Now we have 12 other States that permit the polygraph. If we were to follow the logic of the argument of the Senator from Mississippi, you would think that there would be less bank fraud, and embezzlement. But it happens to be 33.2 incidents per million; 50 percent higher where it is banned entirely.

This idea that it has an impact in the areas of bank fraud and embezzlement is just not sustained, by statistics from the Federal Bureau of Investigation. If we accept the amendment of the Senator from Mississippi, you are creating this false sense of security and reality and you are effectively undermining this bill.

The PRESIDING OFFICER. The time of the Senator from Massachusetts has expired. All time has expired at this point.

The question is on the amendment.

Mr. KENNEDY. Mr. President, I move to table the amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Massachusetts [Mr. KENNEDY] to table the amendment of the Senator from Mississippi [Mr. COCHRAN]. The yeas and nays have been ordered and the clerk will call the roll.

The Legislative Clerk called the roll.

Mr. CRANSTON: I announce that the Senator from Tennessee [Mr. GORE], the Senator from Iowa [Mr. HARKIN], the Senator from Illinois [Mr. SIMON], and the Senator from Mississippi [Mr. STENNIS] are necessarily absent.

I also announce that the Senator from Delaware [Mr. BIDEN] is absent because of illness.

Mr. SIMPSON announced that the Senator from Kansas [Mr. DOLE] is necessarily absent.

The PRESIDING OFFICER (Mr. DECONCINI). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 65, nays 29, as follows:

[Rollcall Vote No. 39 Leg.]

YEAS—65

Adams	Durenberger	Matsunaga
Armstrong	Evans	Melcher
Baucus	Exon	Metzenbaum
Bentsen	Ford	Mikulski
Bingaman	Fowler	Mitchell
Boren	Glenn	Moynihan
Boschwitz	Graham	Nunn
Bradley	Grassley	Packwood
Burdick	Hatch	Pell
Byrd	Hatfield	Proxmire
Chafee	Heinz	Reid
Chiles	Humphrey	Riegle
Cohen	Inouye	Rockefeller
Conrad	Johnston	Sanford
Cranston	Kassebaum	Sarbanes
D'Amato	Kasten	Sasser
Danforth	Kennedy	Shelby
Daschle	Kerry	Specter
DeConcini	Lautenberg	Stafford
Dixon	Leahy	Weicker
Dodd	Levin	Wirth
Domenici	Lugar	

NAYS—29

Bond	Karnes	Rudman
Breaux	McCain	Simpson
Bumpers	McClure	Stevens
Cochran	McConnell	Symms
Garn	Murkowski	Thurmond
Gramm	Nickles	Trible
Hecht	Pressler	Wallop
Heflin	Pryor	Warner
Helms	Quayle	Wilson
Hollings	Roth	

NOT VOTING—6

Biden	Gore	Simon
Dole	Harkin	Stennis

So the motion to lay on the table the amendment (No. 1616) was agreed to.

Mr. KENNEDY. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. BRADLEY. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. KENNEDY. Mr. President, just from my understanding, and the conditions can change, as we have all seen, very rapidly, there is one additional amendment of the Senator from Mississippi. I believe we can hopefully dispose of it either one way or the other without, perhaps, a vote, and then there are additional amendments of the Senator from Texas. I think there are probably two that can be accepted. I think on the next one there will be a requirement for a vote.

Anyone obviously has a right to offer an amendment after that. However, it is at least my judgment at this time that we may be within a reasonable period, at least, of hopefully concluding this aspect of our debate.

Then we will have the Metzenbaum-Heinz amendment. The proponents can describe what the condition is in terms of the length of any debate.

Mr. President, that is the general condition. It might alter or change, but I think hopefully it might hold. That is just as a matter of information.

AMENDMENT NO. 1617

(Purpose: To remove the provisions establishing qualifications standards for polygraph examiners)

Mr. COCHRAN. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

SEC. 10. DISCLOSURE OF INFORMATION.

(a) IN GENERAL.—A person, other than the examinee, may not disclose information obtained during a polygraph examiner may disclose information acquired from a polygraph test, except as provided in this section.

(b) PERMITTED DISCLOSURES.—A polygraph examiner, polygraph trainee, or employee of a polygraph test only to—

(1) the examinee or any other person specifically designated in writing by the examinee;

(2) the employer that requested the test; or

(3) any person or governmental agency that requested the test as authorized under subsection (a), (b), or (c) of section 7 or any other person, as required by due process of law, who obtained a warrant to obtain such information in a court of competent jurisdiction.

(c) DISCLOSURE BY EMPLOYER.—An employer (other than an employer covered under subsection (a), (b), or (c) of section 7) for whom a polygraph test is conducted may disclose information from the test only to a person described in subsection (b).

SEC. 11. EFFECT ON OTHER LAW AND AGREEMENTS.

This Act shall not preempt any provision of any State or local law, or any negotiated collective bargaining agreement, that is more restrictive with respect to the administration of lie detector tests than this Act.

SEC. 12. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in subsection (b), this Act shall become effective 6 months after the date of enactment of this Act.

(b) REGULATIONS.—Not later than 120 days after the date of enactment of this Act, the Secretary shall issue such rules and regulations as may be necessary or appropriate to carry out this Act.

Mr. BYRD. Mr. President, will the distinguished Senator yield?

Mr. COCHRAN. I am happy to yield to the distinguished leader.

Mr. BYRD. This is an amendment on which there has been a time limit entered of 10 minutes equally divided; am I correct?

Mr. COCHRAN. The leader is correct: 10 minutes equally divided.

Mr. BYRD. Does the Senator intend to ask for the yeas and nays?

Mr. COCHRAN. I suspect the yeas and nays will be requested. I assume the managers will be moving to table and the yeas and nays will be requested on the motion to table.

Mr. BYRD. Does the Senator want the yeas and nays?

Mr. KENNEDY. I do not unless the Senator does it.

Mr. BYRD. Does the Senator ask for the yeas and nays?

Mr. KENNEDY. We are going to vote on it.

Mr. COCHRAN. It is all right with me to have an up or down vote or vote on the motion to table.

Mr. KENNEDY. Then we will probably do a motion to table. I am glad to do a voice vote. I will do whatever anybody wants.

Mr. COCHRAN. If the motion to table is made, I intend to ask for the yeas and nays.

Mr. KENNEDY. If it is up or down, the Senator will ask for a voice vote.

Mr. COCHRAN. We will ask for the yeas and nays.

Mr. BYRD. Mr. President, there will be a rollcall vote beginning 10 minutes from now and that will be a 15-minute rollcall vote.

I urge the cloakrooms to so announce to Senators.

Mr. COCHRAN. I understand that time did not get charged to my 5 minutes.

The PRESIDING OFFICER. The Senator is correct.

Mr. COCHRAN. Mr. President, this is an amendment in the nature of a substitute.

Let me state what the amendment seeks to do. The bill reported by the committee bans the use of polygraphs in screening applicants for jobs in selected industries. The bill exempts Department of Defense contractors, and it exempts certain other employers.

This substitute puts all employers on an equal footing, whether we are talking about a drug company interested in screening applicants to see whether they have a past history of drug abuse——

The PRESIDING OFFICER. The Senator will suspend. We should have order in the Chamber so the Senator can be heard.

Please empty the well.

The Senator from Mississippi.

Mr. COCHRAN. I thank the Chair.

The second thing the substitute does, Mr. President, is to permit States to regulate by meeting the standards set by the Secretary of Labor under the committee bill. It does not change the effort to establish minimum standards.

I have a problem with the fact that we are presuming standards are better if they are established in Washington than if they are established by a State government. In my State, for example, we have a good law regulating polygraph examiners and the use of polygraphs, and the law has been on the books since 1968.

Frankly, I do not see any good reason to jettison that law and have it preempted by a new Federal law without good cause.

What we seek by this substitute is to change the committee bill so that it does not ban the use of polygraphs. It lets the States decide how they may be used.

In the State of Massachusetts, the State of the manager of this bill, they have a ban and that will not be changed by the adoption of this substitute.

This substitute permits a State to legislate a ban if it wants to, but it does not provide for Federal preemption in that area.

I urge Senators to adopt the substitute. I reserve the remainder of my time.

Mr. KENNEDY. Mr. President, I yield myself 4 minutes.

I hope that this amendment will not be accepted for a number of the reasons that we have outlined earlier in the course of the debate.

One of the prime findings that we detected is that there is a variety of different States that have prohibitions on polygraphs and have regulations on polygraphers. But the fact that remains is that there is an enormous loophole in which we have seen massive abuse of the polygraph procedure and that is in the States which have the lesser regulation and lesser rules there are no prohibitions and the pattern and practice that is replete in the course of our hearing record is and is becoming increasingly true now with the various mergers of companies and corporations all over this country that for people who are going to be able to gain employment they are tested or they enter the whole job market in a particular area in a particular State and they go to that area instance after instance where there are limited restrictions or no restrictions or poor restrictions and the polygraph is abused. That happens to be the record. That happens to be the course of action.

And the substitute of the Senator from Mississippi—and it is a basic, fundamental substitute—effectively guts the balance that we have put in here which prohibits preemployment but permits the use of polygraph as one of a range of tools—it is just one of a range of tools—if there is reasonable suspicion or reason to believe that there has been some transgression or violation of the law.

Now, that is a balance. That is what has been accepted in the bill. That is what has been supported. And this effectively vitiates and undermines that whole process. It effectively guts the whole bill. It will not really deal with the kinds of excesses that today are so evident in the use of polygraph; as I mentioned, 2 million last year. It has virtually doubled in about the last 3 years. It has gone to eightfold in the last 7 years. The use of it and the abuse of it are going right up through the roof with all the kind of false labeling of individuals.

We do not prohibit the polygraph use, but we have prescribed it in a very narrow and limited way. The Senator from Mississippi would undermine that, and I think effectively gut the bill.

I reserve the remainder of my time.

Mr. COCHRAN. Mr. President, let me point out that at hearings before the Labor Committee, a representative of motel owners testified that in 1986 polygraphs helped to reduce annual losses in that industry from $1 million to less than $115,000. Another witness testified in behalf of the jewelers of Amercia and the American Retail Federation. He stated that his company had found, in States where there are no restrictions on polygraphs, their inventory losses are only 25 percent of what they are in States where the company cannot use polygraphs.

counterintelligence function, of any lie detector test to—

(A) any expert or consultant under contract to the Department of Defense or any employee of any contractor of such Department; or

(B) any expert or consultant under contract with the Department of Energy in connection with the atomic energy defense activities of such Department or any employee of any contractor such Department in connection with such activities.

(2) SECURITY.—Nothing in this Act shall be construed to prohibit the administration, in the performance of any intelligenc or counterintelligence function, of any lie detector test to—

(A)(i) any individual employed by, or assigned or detailed to, the National Security Agency or the Central Intelligence Agency, (ii) any expect or consultant under contract to the National Security Agency or the Central Intelligence Agency, (iii) any employee of a contractor of the National Security Agency or the Central Intelligence Agency, or (iv) any individual applying for a position in the National Security Agency or the Central Intelligence Agency; or

(B) any individual assigned to a space where sensitive cryptologic information is produced, processed, or stored for the National Security Agency or the Central Intelligence Agency.

(c) EXEMPTION FOR FBI CONTRACTORS.—Nothing in this Act shall be construed to prohibit the administration, in the performance of any counterintelligence function, of any lie detector test to an employee of a contractor of the Federal Bureau of Investigation of the Department of Justice who is engaged in the performance of any work under the contract with such Bureau.

SEC. 8. STATE CERTIFICATION OF PLANS EXEMPTION.

(a) Subject to Section 9, this Act shall not prohibit any State, or political subdivision thereof, which, at any time, desires to assume responsibility for development and enforcement therein of standards relating to the use of polygraphs by employers and polygraph examiners, shall file a written statement with the Secretary of Labor certifying that is has adopted an administrative plan to insure compliance with the standards of this Act. Such certification shall:

(1) identify the agency or agencies designated as responsible for administering the plan;

(2) describe the standards contained in the administrative plan governing polygraph examiners and the use of polygraph examinations, which standards (and the enforcement of which standards) shall be at a minimum in full compliance with the standards set out in section 9 of this Act; and

(3) explain the manner in which the standards contained in the administrative plan are being administered and enforced by the designated agency to insure compliance with this Act.

(b) The Secretary shall make a continuing evaluation of each administrative plan which has been certified as in compliance with this Act. Whenever the Secretary finds, after affording due notice and opportunity for a hearing, that the plan is not being administered in a manner that insures substantial compliance with the standards set out in this Act, he shall notify the State or political subdivision of his withdrawal of certification of such plan and, upon receipt of such notice, such plan shall cease to be in effect.

(c) Review of a decision of the Secretary to disapprove an administrative plan under this section may be obtained in the United States Court of Appeals for the circuit in which the State or political subdivision or individual examiner is located by filing a petition for review with such court within 30 days after receipt of the withdrawal of certification.

SEC. 9. MINIMUM FEDERAL STANDARDS FOR POLYGRAPH TESTING.

Each State, or political subdivision thereof, seeking to establish a polygraph testing program under Section 8 of this Act, shall certify to the Secretary of Labor that its program meets the following minimum federal standards—

(a) OBLIGATION TO COMPLY WITH CERTAIN LAWS AND AGREEMENTS.—The exemption provided under section 8 shall not diminish an employer's obligation to comply with—

(1) applicable State and local law; and

(2) any negotiated collective bargaining agreement, that limits or prohibits the use of lie detector test on employees.

(b) RIGHTS OF EXAMINEE.—

(1) PRETEST PHASE.—During the pretest phase, the prospective examinee—

(A) is provided with reasonable notice of the date, time, and location of the test, and of such examinee's right to obtain and consult with legal counsel or an employee representative before each phase of the test;

(B) is not subjected to harassing interrogation technique;

(C) is informed of the nature and characteristics of the tests and of the instruments involved;

(D) is informed—

(i) whether the testing area contains a two-way mirror, a camera, or any other device through which the test can be observed;

(ii) whether any other device, including any device for recording or monitoring the conversation will be used; or

(iii) that the employer and the examinee, may with mutual knowledge, make a recording of the entire proceeding;

(E) is read and signs a written notice informing such examinee—

(i) that the examinee cannot be required to take the test as a condition of employment;

(ii) that any statement made during the trest may constitute additional supporting evidence for the purposes of an adverse employment action described in section 8(b);

(iii) of the limitations imposed under this section;

(iv) of the legal rights and remedies available to the examinee if the polygraph test is not conducted in accordance with this Act; and

(v) of the legal rights and remedies of the employer; and

(F) is provided an opportunity to review all questions (technical or relevant) to be asked during the test and is informed of the right to terminate the test at any time; and

(G) signs a notice informing such examinee of—

(1) the limitations imposed under this section;

(ii) the legal rights and remedies available to the examinee if the polygraph test is not conducted in accordance with this Act; and

(iii) the legal rights and remedies of the employer.

(2) ACTUAL TESTING PHASE.—During the actual testing phase—

(A) the examinee is not asked any questions by the examiner concerning—

(i) religious beliefs or affiliations;

(ii) beliefs or opinions regarding racial matters;

(iii) political beliefs or affiliations;

(iv) any matter relating to sexual behavior; and

(v) beliefs, affiliations, or opinions regarding unions and labor organizations;

(B) the examinee is permitted to terminate the test at any time;

(C) the examiner does not ask such examinee any questions (technical or relevant) during the test that was not presented in writing for review to such examinee before the test;

(D) the examiner does not ask technical questions of the examinee in a manner that is designed to degrade, or needlessly intrude on, the examinee;

(E) the examiner does not conduct a test on an examinee when there is written evidence by a physician that the examinee is suffering from a medical or psychological condition or undergoing treatment that might cause abnormal responses during the test; and

(F) the examiner does not conduct and complete more than five polygraph tests on a calendar day on which the test is given, and does not conduct any such test for less than a 90-minute duration.

(3) POST-TEST PHASE.—Before any adverse employment action, the employer must—

(A) further interview the examinee on the basis of the results of the test; and

(B) provide the examinee with—

(i) a written copy of any opinion or conclusion rendered as a result of the test; and

(ii) a copy of the questions asked during the test along with the corresponding charted responses.

(C) QUALIFICATION OF EXAMINER.—An individual who conducts a polygraph test must—

(1) be at least 21 years of age;

(2) comply with all required laws and regulations established by licensing and regulatory authorities in the State in which the test is to be conducted;

(3)(A) successfully complete a formal training course regarding the use of polygraph tests that has been approved by the State in which the test is to be conducted or by the Secretary; and

(B) complete a polygraph test internship of not less than 6 months duration under the direct supervision of an examiner who has met the requirements of this section;

(4) maintain a minimum of a $50,000 bond or an equivalent amount of professional liability coverage;

(5) use an instrument that records continuously, visually, permanently, and simultaneously changes in the cardiovascular, respiratory, and electrodermal patterns as minimum instrumentation standards;

(6) base an opinion of deception indicated on evaluation of changes in physiological activity or reactivity in the cardiovascular, respiratory, and electrodermal patterns on the lie detector charts;

(7) render any opinion or conclusion regarding the test—

(A) in writing and solely on the basis of an analysis of the polygraph charts;

(B) that does not contain information other than admissions, information, case facts, and interpretation of the charts relevant to the purpose and stated objectives of the test; and

(C) that does not include any recommendation concerning the employment of the examinee; and

(8) maintain all opinions, reports, charts, written questions, lists, and other records relating to the test for a minimum period of 3 years after administration of the test.

(D) PROMULGATION OF STANDARDS.—The Secretary shall establish standards governing individuals who, as of the date of the enactment of this Act, are qualified to conduct polygraph tests in accordance with applicable State law. Such standards shall not be satisfied merely because an individual has conducted a specific number of polygraph tests previously.

ators in the Chamber who desire to vote?

The result was announced—yeas 55, nays 37, as follows:

[Rollcall Vote No. 38 Leg.]

YEAS—55

Adams	Evans	Melcher
Armstrong	Exon	Metzenbaum
Baucus	Ford	Mitchell
Bingaman	Fowler	Moynihan
Boren	Glenn	Nunn
Boschwitz	Grassley	Packwood
Bradley	Hatch	Pell
Breaux	Hatfield	Proxmire
Bumpers	Heinz	Reid
Burdick	Hollings	Riegle
Chafee	Humphrey	Rockefeller
Cohen	Inouye	Sanford
Conrad	Johnston	Sasser
Cranston	Kennedy	Shelby
Danforth	Kerry	Stafford
Daschle	Lautenberg	Weicker
Dixon	Leahy	Wirth
Dodd	Levin	
Durenberger	Matsunaga	

NAYS—37

Bentsen	Karnes	Rudman
Bond	Kassebaum	Sarbanes
Byrd	Kasten	Simpson
Cochran	Lugar	Specter
D'Amato	McCain	Stevens
DeConcini	McClure	Symms
Domenici	McConnell	Thurmond
Garn	Murkowski	Trible
Graham	Nickles	Wallop
Gramm	Pressler	Warner
Hecht	Pryor	Wilson
Heflin	Quayle	
Helms	Roth	

NOT VOTING—8

Biden	Gore	Simon
Chiles	Harkin	Stennis
Dole	Mikulski	

So the motion to lay on the table the amendment (No. 1615) was agreed to.

Mr. FORD. Mr. President, I move to reconsider the vote by which the motion to lay on the table was agreed to.

Mr. LEAHY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1616

Mr. COCHRAN. Mr. President, I send an amendment to the desk in the nature of a substitute and ask that it be stated.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Mississippi [Mr. COCHRAN] proposes an amendment numbered 1616.

Mr. COCHRAN. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Polygraph Protection Act of 1987."

SEC. 2. DEFINITIONS.

As used in this Act:

(1) COMMERCE.—The term "commerce" has the meaning provided by section 3(b) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(b)).

(2) EMPLOYER.—The term "employer" includes any person acting directly or indirectly in the interest of an employer in relation to an employee or prospective employee.

(3) LIE DETECTOR TEST.—The term "lie detector test" includes—

(A) any examination involving the use of any polygraph, deceptograph, voice stress analyzer, psychological stress evaluator, or any other similar device (whether mechanical, electrical, or chemical) that is used, or the results of which are used, for the purpose of rendering a diagnostic opinion regarding the honesty or dishonesty of an individual; and

(B) the testing phases described in paragraphs (1), (2), and (3) of section 9(b).

(4) POLYGRAPH.—The term "polygraph" means an instrument that records continuously, visually, permanently, and simultaneously changes in the cardiovascular, respiratory, and electrodermal patterns as minimum instrumentation standards.

(5) RELEVANT QUESTION.—The term "relevant question" means any lie detector test question that pertains directly to the matter under invstigation with respect to which the examinee is being tested.

(6) SECRETARY.—THE TERM "SECRETARY" means the Secretary of Labor.

(7) TECHNICAL QUESTION.—The term "technical question" means any control, symptomatic, or neutral question that, although not relevant, is designed to be used as a measure against which relevant responses may be measured.

SEC. 3. PROHIBITIONS ON LIE DETECTOR USE

Except as provided in sections 7 and 8, it shall be unlawful for any employer engaged in or affecting commerce or in the production of goods for commerce—

(1) directly or indirectly, to require, request, suggest, or cause any employee or prospective employee to take or submit to any lie detector test;

(2) to use, accept, refer to, or inquire concerning the results of any lie detector test of any employee or prospective employee;

(3) to discharge, dismiss, discipline in any manner, or deny employment or promotion to, or threaten to take any such action against—

(A) any employee or prospective employee who refuses, declines, or fails to take or submit to any lie detector test; or

(B) any employee or prospective employee on the basis of the results of any lie detector test or;

(4) to discharge, discipline, or in any manner discriminate against an employee or prospective employee because—

(A) such employee or prospective employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act;

(B) such employee or prospective employee has testified or is about to testify in any such proceeding; or

(C) of the exercise by such employee, on behalf of such employee or another person, of any right afforded by this Act.

SEC. 4. NOTICE OF PROTECTION

The Secretary shall prepare, have printed, and distribute a notice setting forth excerpts from, or summaries of, the pertinent provisions of this Act. Each employer shall post and maintain such notice, in conspicuous places on its premises where notices to employees and applicants to employment are customarily posted.

SEC. 5. AUTHORITY OF THE SECRETARY.

(a) IN GENERAL.—The Secretary shall—

(1) issue such rules and regulations as may be necessary or appropriate to carry out this Act;

(2) cooperate with regional, State, local, and other agencies, and cooperate with and furnish technical assistance to employers, labor organizations, and employment agencies to aid in effectuating the purposes of this Act; and

(3) make investigations and inspections and require the keeping of records necessary or appropriate for the administration of this Act.

(b) SUBPOENA AUTHORITY.—For the purpose of any hearing or investigation under this Act, the Secretary shall have the authority contained in sections 9 and 10 of the Federal Trade Commission Act (15 U.S.C. 49 and 50).

SEC. 6. ENFORCEMENT PROVISIONS.

(a) CIVIL PENALTIES.—

(1) IN GENERAL.—Subject to paragraph (2)—

(A) any employer who violates section 4 may be assessed a civil money penalty not to exceed $100 for each day of the violation; and

(B) any employer who violates any other provision of this Act may be assessed a civil penalty of not more than $10,000.

(2) DETERMINATION OF AMOUNT.—In determining the amount of any penalty under paragraph (1), the Secretary shall take into account the previous record of the person in terms of compliance with this Act and the gravity of the violation.

(3) COLLECTION.—Any civil penalty assessed under this subsection shall be collected in the same manner as is required by subsections (b) through (e) of section 503 of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1853) with respect to civil penalties assessed under subsection (a) of such section.

(b) INJUNCTIVE ACTIONS BY THE SECRETARY.—The Secretary may bring an action to restrain violations of this Act. The district courts of the United States shall have jurisdiction, for cause shown, to issue temporary or permanent restraining orders and injunctions to require compliance with this Act.

(c) PRIVATE CIVIL ACTIONS.—

(1) LIABILITY.—An employer who violates this Act shall be liable to the employee or prospective employee affected by such violation. Such employer shall be liable for such legal or equitable relief as may be appropriate, including but not limited to employment, reinstatement, promotion, and the payment of lost wages and benefits.

(2) COURT.—An action to recover the liability prescribed in paragraph (1) may be maintained against the employer in any Federal or State court of competent jurisdiction by any one or more employees for or in behalf of himself or themselves and other employees similarly situated.

(3) COSTS.—The court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.

(d) WAIVER OF RIGHTS PROHIBITED.—The rights and procedures provided by this Act may not be waived by contract or otherwise, unless such waiver is part of a written settlement of a pending action or complaint, agreed to and signed by all the parties.

SEC. 7. GOVERNMENTAL AND FEDERAL EXEMPTIONS.

(a) NO APPLICATION TO GOVERNMENTAL EMPLOYERS.—The provisions of this Act shall not apply with respect to the United States Government, a State or local government, or any political subdivision of a State or local government.

(b) NATIONAL DEFENSE AND SECURITY EXEMPTION.—

(1) NATIONAL DEFENSE.—Nothing in this Act shall be construed to prohibit the administration, in the performance of any

it as a condition of employment and supports our particular proposal because we have aligned the request on polygraph with other investigative techniques. That way you provide safety in the common carrier area. We are providing it. Where you do not provide the protection for those that ride in the airlines or railroads or in other areas is by putting reliance upon safety by giving a polygraph. We have demonstrated that time in and time out with the OTA study. That is overwhelmingly powerful evidence, Mr. President.

The fact is, if we are concerned about the use of various drugs, we say, as we heard from the Senator from Indiana, we are not dealing with drug tests—this bill doesn't address drug tests. We are not dealing with that. But do not give the people in the back of the plane the sense that their pilot is OK because he passed a polygraph, because it is not that reliable in the kinds of circumstances in which it has been used in the private sector.

I heard the debate earlier of the Senator from Texas. He said, "Well, why don't we use the Federal rules?" Four to eight hours? Eight hours of investigation? Up to $800? The industries and the chamber of commerce out there in the waiting room would be appalled at that.

So you are having to deal with both safety and the extent that this should be used as an investigative technique. We have devised a balance and we believe that that provides for safety and security in the area of common carriers and the other areas as well.

That is basically the argument against.

I reserve the remainder of my time.

Mr. GRAMM addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mr. GRAMM. The distinguished Senator from Massachusetts makes a total non sequitur, and the equivalent would be that because building a fence or putting a lock on your door does not guarantee you will not be burglarized; therefore, do not go out spend money on fences or locks.

Nobody is guaranteeing that the tool of a polygraph is going to prevent someone on cocaine from flying an airliner into the ground, nor is it a guarantee that you are going to have ironclad protection by using a drug test or by using psychological testing. But the question is, Do we want to deny the airlines access to that tool?

I was little amazed in listening to our distinguished colleague talk about how polygraphs were no good. I hope the Soviets were listening or the CIA because the Soviets told the Walker family when they were spying for the Soviet Union "Get all the information you can except do not apply for a job where you have to take a polygraph." So obviously the Soviets do not understand this issue the way the distinguished Senator from Massachusetts does.

The PRESIDING OFFICER. The time of the Senator from Texas has expired.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. The fact remains that, for example, Delta Air Lines, which I do not believe, is less concerned about their passengers than the Senator from Texas, refused to use it. They studied it, researched it, and refused to use it because they felt that it creates a false sense of security.

Now, Mr. President, it is not only Delta Air Lines; the railroad industry has endorsed our bill.

The Senator from Texas talks about the Russians. What does that have to do with it?

The scientific information, Mr. President, shows that it is not reliable, and that if you are going to use it as a tool, it may have some value in association with other investigative tools.

The Senator wants it both ways. On the one hand, he says it is not reliable and, on the other, he says let us use Federal standards—4-8-hour investigating, carefully trained investigators, two tests a day, $800 cost.

The military does not even have enough trained people to provide adequate polygraph tests, and the Senator wants to use it on others who may be able to escape detection and thus give a false sense of reliability.

If you want to go with the various kinds of drug testing, go ahead and do it, but do it in the way that is scientifically and medically sound.

The amendment of the Senator from Texas does not do it, and it deserves to be tabled.

I reserve whatever time I have.

The PRESIDING OFFICER. The Senator from Massachusetts has 31 seconds.

Mr. LEVIN. Mr. President, I will vote against the Gramm amendment because it provides a blanket exemption to the restrictions this bill places on the use of polygraphs for a certain class of workers, and does not provide any assurance that the results of these tests will not be used as the sole basis for firing, demoting, or denying employment to those workers.

Under the provisions of S. 1904, the underlying bill, common carriers are permitted to use polygraph testing as one of a number of tools to investigate a specific incident. It specifically provides that the results of a test cannot be used to take action against an employee "without additional supporting evidence."

The Gramm amendment, on the other hand, would permit the use of polygraphs for preemployment screening or random testing of employees without reasonable suspicion of their involvement in a specific incident. And it does not even provide a guarantee that the polygraph—which according to scientific studies has a questionable record of accuracy—won't be used as the sole basis to fire or demote an employee, or even to deny someone a job in the first place.

Last year, I supported an amendment offered by Senator DANFORTH which provided for drug testing of those involved in air transportation, and I would support similar amendments applying to other types of common carriers. Such proposals enhance public safety by allowing carefully prescribed use of a type of testing that has a reasonable record of accuracy.

Earlier today, I voted for the Nickles/Thurmond amendment, which provided for a wider use of polygraphs for security personnel. The security personnel amendment, in contrast to the Gramm common carrier amendment, has provisions defining employers' obligations and limiting the use of the test results. It emphasizes the employer's obligation to comply with State and local law and negotiated collective bargaining agreements that limit or prohibit the use of lie detector tests; and it provides that the results of the test are not to be used as the sole basis for adverse action against a current or prospective employee.

The Gramm amendment does not contain these safeguards, instead creating a wide open exemption for a certain group of employers to use polygraphs. Therefore, I cannot support it.

Mr. KENNEDY. I yield back the time.

The PRESIDING OFFICER. All time is yielded back.

Mr. KENNEDY. I move to table the amendment.

The PRESIDING OFFICER. The question is on the amendment.

Mr. KENNEDY. I ask for the yeas and nays.

Mr. GRAMM. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Texas. The clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Florida [Mr. CHILES], the Senator from Tennessee [Mr. GORE], the Senator from Iowa [Mr. HARKIN], the Senator from Maryland [Ms. MIKULSKI], the Senator from Illinois [Mr. SIMON], and the Senator from Mississippi [Mr. STENNIS] are necessarily absent.

I also announce that the Senator from Delaware [Mr. BIDEN] is absent because of illness.

I further announce that, if present and voting, the Senator from Maryland [Ms. MIKULSKI] would vote "yea."

Mr. SIMPSON. I announce that the Senator from Kansas [Mr. DOLE] is necessarily absent.

The PRESIDING OFFICER (Mr. LAUTENBERG). Are there any other Sen-

not be more than 20 minutes equally divided. Perhaps that time will be yielded back or perhaps it might be accepted as we go along. But that would be the extent of the activity here. There are timely amendments, but any that are not brought in this evening or not known as per differently from Senators COCHRAN and GRAMM can be handled tomorrow under postcloture. But we can certainly pull it down to that.

Mr. BYRD. Mr. President, I have the approval of the distinguished manager of the bill.

I ask unanimous consent that there be 10 minutes on each of the two Cochran amendments, equally divided in accordance with the usual form; that no amendment to the amendment be in order in each instance; and that on the amendment which Mr. GRAMM will call up presently there be 10 minutes equally divided with no amendment to the amendment be in order. The reason I say that we do not exclude amendments to the amendment is any amendment, no matter how far-reaching, that was offered to his amendment would have to be voted on without debate. So I say that for the protection of all Senators.

That way, the Senator could proceed. He would have 10 minutes equally divided, and in the meantime I would hope that we could be able to clear the Metzenbaum amendment. Then we would proceed accordingly, if we could get these requests now.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. BYRD. Was the request put by the Chair, the earlier request that I propounded?

The PRESIDING OFFICER. That is correct.

Mr. BYRD. I thank the Chair.

Mr. PRYOR. Mr. President, I reserve the right to object; I did not quite hear the distinguished majority leader. Involved in this, was there any provision of stacking of votes?

Mr. BYRD. No, there was not. As I understand Mr. KENNEDY, he would like to proceed for a while and there is an inclination on the other side about a certain time on amendments. So perhaps we are making progress, if we could go along for a little while to see where we are.

Mr. PRYOR. Might I just suggest, if we are going to have four or five votes tonight, as it looks as if we are, might I respectfully suggest to the majority leader that those votes be 10-minute votes?

Mr. BYRD. Mr. President, I guess we should not do that on the first vote certainly. Then we can put that request later. I thank the distinguished Senator.

But, Mr. President, I ask unanimous consent that on each 15-minute vote the call for the regular order be automatic at the conclusion of the 15 minutes.

The PRESIDING OFFICER. Is there objection?

Mr. BRADLEY. Reserving the right to object, I missed the majority leader's description of what amendments were going to come and how frequently they would come. Is there a window?

Mr. BYRD. No. There is not any window. We expect votes frequently and without much debate.

Mr. BRADLEY. After half an hour or so?

Mr. BYRD. No. I think there should be a vote within 10 minutes.

Mr. GRAMM addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas.

AMENDMENT NO. 1615

(Purpose: To provide a common carrier exemption)

Mr. GRAMM. I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Texas [Mr. GRAMM] proposes an amendment numbered 1615.

Mr. GRAMM. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(e) COMMON CARRIER EXEMPTION.—This Act shall not prohibit the use of a lie detector test by an employer on any employee or prospective employee of any common carrier as defined by section 10102(4) of title 49 United States Code, including any air transportation as defined in section 101 of the Federal Aviation Act of 1958 and any other common carrier engaged in the hauling of passengers or freight.

The PRESIDING OFFICER. If the Senator will suspend, may we have order in the Chamber so the Senator can be heard?

Mr. GRAMM. Mr. President, this is a very simple amendment. The bill before us allows the Federal Government, State governments, and local governments to use polygraph for the purposes they may deem within State law and within Federal law. It in essence has a blanket government exemption.

It then specifically exempts from coverage under this bill, which is prohibition against use of polygraph, contractors that are doing work for the Department of Energy and some other specific Government agencies.

The amendment that I have offered simply allows the private sector within State law, within Federal law that part of the private sector that is involved in common carriage—that is, ground transportation, air transportation, water transportation—to have the right within Federal law and State law to use polygraph.

Mr. President, this is a clear-cut issue. If we are going to give the Department of Agriculture power to use polygraph for the public purpose related to people who are in seed research, if we are going to give local government that power, surely we dare not deny that power involving airline pilots, railroad engineers, pilots of ships where human life is potentially endangered.

We have already acted on a similar amendment related to drug testing. The problem is, however, that with the drug test you are testing drugs that are in people's bodies at the time. I for one am not willing to say to an airline, that has the potential of having a pilot flying an airplane that my wife and children may be on or that the distinguished Senator from Massachusetts might be on, that you do not have the right to use a polygraph within the constraints of State and Federal law to find out if that airline pilot has used cocaine or is likely therefore to use it in the future.

It seems to me we are denying the tool here related to common carriers that is not prudent public policy. So the vote here is do we want to give private companies engaged in common carriers the right to use polygraph obviously relating to those areas where we are talking about mechanics that are repairing airplanes, pilots, and people who are running railroad engines. I think this is a prudent exemption, and I urge the distinguished Senator from Massachusetts to not close his heart on this important exemption that could mean the life and health and safety of the American people.

I believe this is a reasonable exemption, and that it should be adopted.

Surely, if we can allow every agency of the Federal Government, every agency of every State government to use polygraph, we dare not deny that tool for use to protect the skyways, the waterways, the highways, and our railroads.

I urge my distinguished colleague to support this amendment. Perhaps we could adopt it by unanimous consent.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Do we have a time limit?

The PRESIDING OFFICER. Five minutes a side.

Mr. KENNEDY. How much time now remains?

The PRESIDING OFFICER. The Senator has 6 minutes and 11 seconds.

Mr. KENNEDY. I yield myself 4 minutes.

Mr. President, we have to make a decision whether the polygraph is effective and reliable or is not. That is the basic issue. The Senator from Texas has an irrefutable argument if it is accurate. It is not accurate. We have tried over the course of this debate to demonstrate it is not accurate. Even the National Institute of Justice has found that it is not effective.

For that reason, the Association of American Railroads, representing one of the prime common carriers, rejects

been recognized under the standing order, there be morning business not to extend beyond the hour of 9 a.m. and that Senators may speak during the period for morning business for not to exceed 5 minutes each; that if no motion or resolution over, under the rule come over and that the call of the calendar under rule VIII be waived.

The PRESIDING OFFICER. Is there objection?

Mr. METZENBAUM. Reserving the right to object, and I do not intend to object, would the leader be good enough to tell us what the subject is for that 5 hours?

Mr. BYRD. I would yield to the distinguished acting Republican leader.

Mr. SIMPSON. Mr. President, it is best described as a sensitive issue, one that would come to pass even under the most extraordinary parliamentary procedures. It has to do with a sense-of-the-Senate resolution which will be proposed by Senator SPECTER which directs itself to the rule to the motion to compel absent Senators through the use of the Sergeant at Arms, setting out the procedure in the future, which will be referred to the Rules Committee.

Mr. METZENBAUM. I have no objection.

Mr. SIMPSON. And that is what that is.

Mr. PRYOR addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. PRYOR. Mr. President, reserving the right to object, and I do not plan to object, I am wondering if the majority leader and the acting Republican leader, together with the distinguished manager, the Senator from Massachusetts, might not propose some sort of a time agreement on the amendments to be offered tonight, debate those amendments and then tomorrow morning, having stacks of votes, let us start voting at an earlier time, rather than keeping the Senate in until 10 or 11 o'clock this evening.

I wonder if that is within the realm of possibility to perform in that manner?

Mr. BYRD. Mr. President, the Senator makes a good suggestion. I would want to hear from the manager of the bill first. I would like to say that at least there should be a vote on the amendment by Mr. METZENBAUM because of the limits of that sense-of-the-Senate amendment. And we could, over the next few minutes, attempt to see if we could work out a time agreement on the other amendments, possibly stack votes on them at some time. I suppose the stacking would have to begin after the cloture vote tomorrow or prior thereto.

Mr. PRYOR. Mr. President, further reserving the right to object, I have just discussed with the Senator from Ohio the possibility of a time agreement on his sense-of-the-Senate amendment. While a discussion is being held, would it be possible to move to his sense-of-the-Senate resolution and let disposition be taken of that and possibly go back to this, thus making us have only one vote tonight?

Mr. BYRD. Mr. President, I think there will definitely be a vote on the amendment by Mr. METZENBAUM this evening. I still want to hear from the manager of the bill. I would be happy to propound a time limitation of 15 minutes for each Senator or less, say, 10 minutes to a side. We already have had a good bit to say on it.

Mr. METZENBAUM. I do not care. My opinion is it would take 3 minutes or so.

Mr. BYRD. I would like to hear from the manager.

Mr. KENNEDY. Mr. President, I do think in fairness to my colleague, the Senator from Connecticut, I am glad to continue the debate on this issue. I am glad to debate it tonight. I am glad to follow whatever procedures the Senators want. I do note the Senator from Connecticut, I think in terms of the time limit, as I understand it, is the one Member who has brought to my attention his own concern about this issue.

I would hope that before a time limit is developed on the Metzenbaum amendment at least he be consulted. I am prepared to agree to any time limit that is worked out.

Mr. BYRD. Very well.

Mr. KENNEDY. I think he ought to be consulted on the time limit.

On the other issue, I imagine there would be objection to stacking. Quite frankly, I am glad to debate the Senator from Texas as long as he would like to.

I will point out to the Members that the bill was laid down at 2 o'clock yesterday, and we waited until well into the midafternoon before we had any amendments. So for those who have this burning desire to debate these issues, it is not that we have not had a reasonable period of time in which to do it.

Having said that, if there is objection, and there probably will be, I am more than glad to take some time to debate it. But I want to give the assurances as the floor manager of this bill that I do not feel a sense of constraint. I am sorry that we are going into the hours this evening, but I will remind my colleagues, and they can review the RECORD both yesterday and today, that we did not involve ourselves with the substantive issues.

The Senator from Texas made an eloquent statement, which I heard through the television because I necessarily had to be off the floor for about 15 to 20 minutes. But after that, we did not really have substantive amendments.

I think the membership ought to understand that if this was such a burning issue and people wanted to get over here, they certainly had an opportunity before 7 o'clock on this evening.

I am quite prepared to stay here and follow whatever the indications are of the Members on any of these matters. If they want to stack, that is agreeable with me. If they want to continue, I would hope that we would continue to move toward further progress on the bill.

Mr. GRAMM. Would the distinguished majority leader yield?

Mr. BYRD. I yield.

Mr. GRAMM. I would like to say I think the amendments we have had have been substantive. I have spoken on the floor twice today on this issue. In fact, I sat here waiting for an opportunity to offer an amendment while several Members spoke and others were recognized, in terms of offering amendments. So there have been no dilatory tactics on my part. Each of my amendments are germane. They would be eligible to be offered after cloture. They address fundamental issues like, do you want to exempt common carriers?

Fundamental issues such as given that you have exempted contracts with the Department of Energy. Do we want to exempt contracts with the Drug Enforcement Administration on the use of lie detectors?

So my amendments have nothing to do with dilatory tactics. They are all germane. They all address the issue. My problem has been that other people have been here, and when I was prepared to offer an amendment, other people were recognized. So I am willing to do it tonight. I would be happy to do it tomorrow. I would like to know when we are going to do it. If there is only going to be one amendment tonight, I would like to know it so I can go to the Banking Committee.

Mr. BYRD. Mr. President, if there is anybody here who is probably having some difficulties with respect to standing on his feet for the rest of this evening, it is the manager of the bill. I certainly want to accord him every courtesy and follow his wishes in this matter.

I have this suggestion: I suggest that Mr. GRAMM proceed with an amendment. Perhaps we could get a time agreement on that one amendment. That would give us time to contact the Senators for whom Mr. KENNEDY alluded earlier. Perhaps we can get a time agreement then on the Metzenbaum amendment. Then by that time I think we should be able to have a list of amendments and the time that we would propose on each of those amendments.

Mr. SIMPSON. Mr. President, I think we can do that. I have two amendments of Senator COCHRAN. He has agreed to a time agreement of 10 minutes equally divided on each amendment. That is Senator COCHRAN.

I have now Senator GRAMM, who has agreed to go with his first amendment, which is 10 minutes equally divided on this first amendment. In any event, on his remaining amendments, it would

employees but others that I knew in business did. That is a hard decision to make. That means that you do not trust your employees and if you do not trust your employees I tell you that you begin the path toward not doing very well in business and perhaps even ending your business career.

There has to be a mutuality of trust, but in the event that an employee wants to take the test, in the event that the business is going to fold due to employee theft, certainly an employee should be able to volunteer for a test so there will not be a cloud over his head.

To think that people will volunteer for a lie detector test on the basis that they are going to be able to fool the lie detector when the bill has provisions as to how the lie detector test is going to be administered I think that is not dealing with the real world.

I ask for the yeas and nays on my amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I move to table the amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table the amendment of the Senator from Minnesota.

On this question, the yeas and nays were ordered and the clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Tennessee [Mr. GORE], the Senator from Iowa [Mr. HARKIN], the Senator from Illinois [Mr. SIMON], and the Senator from Mississippi [Mr. STENNIS] are necessarily absent.

I also announce that the Senator from Delaware [Mr. BIDEN] is absent because of illness.

Mr. SIMPSON. I announce that the Senator from Kansas [Mr. DOLE] is necessarily absent.

The PRESIDING OFFICER (Mr. PELL). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 56, nays 38, as follows:

[Rollcall Vote No. 37 Leg.]

YEAS—56

Adams	DeConcini	Johnston
Armstrong	Dodd	Kassebaum
Baucus	Durenberger	Kennedy
Bentsen	Evans	Kerry
Bingaman	Exon	Lautenberg
Boren	Ford	Leahy
Bradley	Glenn	Levin
Burdick	Graham	Matsunaga
Chafee	Grassley	McCain
Chiles	Hatch	Melcher
Cohen	Hatfield	Metzenbaum
Conrad	Heinz	Mikulski
Cranston	Hollings	Mitchell
Daschle	Inouye	Moynihan
Nunn	Riegle	Shelby
Packwood	Rockefeller	Stafford
Pell	Sanford	Weicker
Proxmire	Sarbanes	Wirth
Reid	Sasser	

NAYS—38

Bond	Hecht	Quayle
Boschwitz	Heflin	Roth
Breaux	Helms	Rudman
Bumpers	Humphrey	Simpson
Byrd	Karnes	Specter
Cochran	Kasten	Stevens
D'Amato	Lugar	Symms
Danforth	McClure	Thurmond
Dixon	McConnell	Trible
Domenici	Murkowski	Wallop
Fowler	Nickles	Warner
Garn	Pressler	Wilson
Gramm	Pryor	

NOT VOTING—6

Biden	Gore	Simon
Dole	Harkin	Stennis

So the motion to lay on the table amendment No. 1610 was agreed to.

Mr. KENNEDY. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. HATCH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, if we could have the attention of the Members here? As I understand, there are still two outstanding amendments to be made. Perhaps there are more, but at least two that the Senator from Utah and I know about. We are glad to consider and debate these issues this evening or we are glad to accommodate whatever the leadership is inclined to do; if there is a request by the leadership.

The PRESIDING OFFICER. The majority leader.

Mr. BYRD. Mr. President, how many Senators have amendments that they intend to call up? Mr. GRAMM? How many amendments does the Senator intend to call up?

Mr. GRAMM. Less than 10, I think.

Mr. BYRD. Less than 10.

Mr. COCHRAN?

Mr. COCHRAN. Mr. Leader, I have three amendments.

Mr. BYRD. Anybody else? Mr. METZENBAUM?

Mr. METZENBAUM. I have one on the steel matter, a sense-of-the-Senate resolution.

Mr. BYRD. Well, Mr. President, I think we ought to just stay and let the Senators offer their amendments.

As to tomorrow, would the distinguished acting Republican leader at this time be ready to discuss the proposal that we talked about earlier?

Mr. SIMPSON. Mr. President, I think it would be very appropriate to discuss that. I am hoping that those who have amendments might finish them tonight, rather than at a postcloture attitude tomorrow. The majority leader may go ahead and express what he and I have discussed. I think it sounds highly reasonable and I have discussed it with those on my side of the aisle. You may wish to propose it or I could suggest what it is but I leave that to you, sir.

Mr. BYRD. Very well. I ask unanimous consent that on tomorrow, at 9 o'clock, there be, on another matter, 4 hours of debate under the control of the distinguished acting Republican leader; that there be 1 hour of debate under my control on the same matter; that the vote on cloture then occur which would be at 2 p.m.

As I understand it, I would hope that following tonight's work, there would not be any further amendments, but perhaps when the evening is over, we could determine whether or not there are one or two amendments. I hope there will not be any. And then the Senate would complete its action.

I assume that cloture will be invoked. We already have the order that upon the disposition of the pending bill, the Senate will go to the intelligence authorization bill. It is possible that that could be finished tomorrow, and if it is not finished tomorrow, it would go over until Friday. Hopefully we could complete action on that bill Friday.

There would be a vote on Friday on the nomination on the executive calendar of William F. Burns, of Pennsylvania, to be Director of the U.S. Arms Control and Disarmament Agency.

As to the unanimous-consent request, as I say, it would provide for beginning at 9 o'clock tomorrow, time under the control of the distinguished acting Republican leader to be 4 hours, to be followed by 1 hour controlled by me, on an extraneous matter. He and I have an understanding as to how we will arrange the last hour and a half of that. Then the vote on cloture would occur at 2 p.m. with the mandatory quorum call under the rule being waived.

The PRESIDING OFFICER (Mr. CONRAD). Is there objection?

Mr. SIMPSON. Mr. President, I would respectfully add, if I may, to the majority leader that we would convene at 8:30 and then 10 minutes with the leaders, leader time, and then recognition of Senator PROXMIRE, and then beginning at 9 o'clock with the 4 hours.

Mr. BYRD. That was the understanding. Not knowing what time the Senate will complete its work tonight, I thought I would leave that 8:30 convening hour out of the order for the moment. It may very well be that we are going to come in at 8:45, whatever. The 4 hours under the control of the distinguished acting Republican leader would start running at 9, the control of time.

For the moment, let me include the rest of the agreement that the distinguished Senator referred to.

I ask unanimous consent that when the Senate completes its business today that it stand in adjournment until the hour of 8:30 tomorrow morning; provided further, that after the two leaders, or the designees, have

of discrimination if not overt discrimination.

Mr. BOSCHWITZ. Mr. President, will the Senator yield?

Mr. HATCH. I would be happy to yield if I could make a line of points and then I think the distinguished Senator would want to ask me some questions perhaps.

Maybe there are three or four in that group of people, and I do not know anybody who would want to voluntarily take a lie detector test under the circumstances of knowledge that they may not be accurate. Most people perhaps do not know that they are generally inadmissible under evidentiary rules in our courts of law, but if they heard that they would be very concerned about the accuracy of lie detector tests, and maybe the honest guy will fail it.

I have actually seen cases of honest people where the polygrapher was so well skilled that he knew what looked like deception really was not, it was really honesty, but you have to have a very skilled polygrapher to be able to determine that because people who are very honest are sometime the most uptight. The one with the highest set of ethics and the highest principles may be the ones who come out deceptive under an improperly administered polygraph or even under one administered by a person who has skills but not the ultimate skills in administering polygraphs.

Under our bill you need the evidentiary basis before the employer can use the polygraph. That is a protection to both the employer and the employee.

Under the amendment the reality of coercion is always there. That is what I want to get rid of.

I know the distinguished Senator has noble goals here and noble aims, but literally the reality will be that of coercion.

Frankly that is what we are trying to get around here.

For instance, let us push it to its logical extreme. Let us say that one employee is under reasonable suspicion. By this bill let us say that one employee requests a polygraph. Why would he or she request a polygraph? The reason he or she is requesting a polygraph is that somebody accused them or they are afraid they are under reasonable suspicion for having done something wrong. That is the only reason anybody would request a polygraph test. Nobody in their right mind would request it otherwise.

If there is the evidentiary basis, if there is a reasonable suspicion, nothing stops that employee from saying to his employer, "Look, I will be glad to take a polygraph." The employer might say to him, "Why, I don't want to pay for it."

Under this bill, you know there is a real question whether the employee can be fired under those circumstances.

The fact is that the employer probably would be glad to pay for it if he is any kind of employer.

Let us say the employer says, "I don't want to pay for it," and the employee says, "I will pay for it. Let us agree on the polygraph institution or the polygrapher and I will pay for it."

I cannot imagine an employer, unless they are really trying to discriminate against the employee, who would not accept that situation and allow the employee to demand a polygraph test for which the employee pays.

Now I think that the carefully crafted language of this bill solves the problem of the distinguished Senator from Minnesota but it also solves this problem of coercion, and that is what bothers me.

I cannot support the amendment of my friend from Minnesota, and I wish I could, but I think the bill is crafted properly.

Let us face it. There are good arguments that we should have preemployment screening, but I think on balance when you consider those who really are hurt by the process that exists today that outweighs the arguments in favor of preemployment screening. I think the arguments I made outweigh the arguments of the distinguished Senator from Minnesota even though I am sure he disagrees with that. I think we have it crafted. I think we can resolve these problems. I think the employee can demand a polygraph examination and pay for it himself or herself, but the fact of the matter is there is no reason to change this bill as it is written because if we adopt the language of my friend from Minnesota, then we are adopting language that I think leads to coercion in the workplace. That is what we are trying to avoid.

I am happy to yield to my friend.

Mr. BOSCHWITZ. I ask my distinguished colleague from Utah if these tests can be so easily fooled——

Mr. HATCH. They can.

Mr. BOSCHWITZ. They can, you say.

Mr. HATCH. They can under certain circumstances.

Mr. BOSCHWITZ. Why do you have this section in here at all in this case? If you think that polygraphs work so poorly why do you not just outlaw them out of hand?

Mr. HATCH. We know they work if they are properly administered under the best of circumstances with good analysis and good questions and a reasonable time. We know that they can work 85 percent of the time.

Now, the way we have written this is we have written it so that the polygraph does not solely become the instrument of discharge for the employee. It can be a part of the consideration and it may very well be that the polygraph examination will exonerate the employee so that the employer will really feel satisfied.

So we have acknowledged that under those circumstances where a reasonable suspicion arises or appropriate evidentiary basis the employee can administer the polygraph and we also suggest standards better than the standards that presently exist.

This bill does two things. It sets up an evidentiary basis so that the polygraph itself is not the sole reason for discharging the employee and it sets up a system whereby better standards can be developed and more uniform standards.

Mr. BOSCHWITZ. Mr. President, will the Senator yield?

Mr. HATCH. I am happy to yield.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. BOSCHWITZ. Mr. President, I do not want to extend this debate and I know that the senior Senator from Massachusetts wants to make a motion to table which will effectively end debate.

But in the event the Senator from Utah wants to put some conditions on this amendment that say that the tests have to be taken by a licensed person or something like that I have no objection.

Mr. HATCH. Will the Senator yield on that point?

Mr. BOSCHWITZ. I yield.

Mr. HATCH. We cannot do that because one of the biggest problems we have——

Mr. BOSCHWITZ. What?

Mr. HATCH. We cannot do that because one of the biggest problems we have is what standards will be set or imposed on the States or the Federal Government. We are going to leave that to the people to whom it should be left.

Frankly, we can do that.

The Senator's amendment is effective in one particular and that is that it results in coercion of the workplace. It results in that. I know what he is trying to do but the way it is written it results in that.

Frankly, I think our language on which we spent really quite a bit of time solves the problem.

Mr. BOSCHWITZ. Mr. President, we would be very happy to make this amendment subject to section 8 of the bill that lists qualifications of examiners and I presume that the bill would be broad enough that if the amendments were added it would be subject to all of those conditions.

But you know we deal with examples, I would say to my friend from Utah, and the example is that you cast a cloud over people who cannot exonerate themselves.

If you think that people are going to volunteer for this test, that people who are liars or know that the tests can be fooled, that they are going to volunteer for this test, you are really not dealing with the real world, I would say to my friend from Utah, because in my business career I never imposed a lie detector test on any of my

Mr. BOSCHWITZ addressed the Chair.

The PRESIDING OFFICER (Mr. LEAHY). The Senator from Minnesota.

Mr. BOSCHWITZ. Mr. President, I thank the Senator from Indiana. Indeed, the situation that he described could certainly come up. Again from my business experience, I am aware of companies that have gone out of business due to theft. Indeed, that becomes a well-known fact. And employee theft within a company normally is not a well-known fact. It does not become knowledge that is to say. But in the event a company is widely affected or perhaps even goes out of business, the cloud indeed could be cast over all of the employees who were associated with that business, and make it more difficult for them to obtain employment thereafter.

My friend from Massachusetts talks about the fact that he has broad support from the business community. Nine associations, I understand, support this bill as it is. I understand that the Senator from South Carolina [Mr. THURMOND] has introduced a list of 80 associations that oppose it.

I say to my friend from Massachusetts, with respect to the second part of this amendment that he read, that the employer or agent administering the test inform the employee or prospective employee that taking the test is voluntary, we added that from the standpoint of protection. Just as a policeman must inform a suspect that he has certain rights, we just wanted to be sure that the employer must state to him that this is voluntary, so it is said out loud.

If the distinguished Senator from Massachusetts objects to that provision, we will take it out.

I ask for the attention of the Senator from Utah, as well, if the Senator from Utah will listen to the resubmission of this amendment. It would read:

This act shall not prohibit an employer or agent of the employer from administering a lie detector test to an employee if the employee requests the test.

I would like to change the amendment. I would withdraw and resubmit the amendment, and I ask at this time that my amendment be withdrawn.

The PRESIDING OFFICER. The Senator has a right to withdraw his amendment. The amendment is withdrawn.

Mr. KENNEDY and Mr. BOSCHWITZ addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota has retained the floor.

AMENDMENT NO. 1610

(Purpose: To permit an employer to administer a lie detector test to an employee if the employee requests the test)

Mr. BOSCHWITZ. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Minnesota [Mr. BOSCHWITZ] proposes an amendment numbered 1610:

On page 28, between lines 14 and 15, insert the following new subsection:

(e) EXEMPTION FOR VOLUNTARY TESTS.—This Act shall not prohibit an employer or agent of the employer from administering a lie detector test to an employee if—

the employee requests the test.

Mr. BOSCHWITZ. Mr. President, the amendment is simple and direct. I hope that the manager of the bill and the minority manager of the bill will be able to accept it.

Mr. KENNEDY. Mr. President, I have outlined the reasons earlier about my own reservations. They are reinforced with the example that has been given by the Senator from Indiana.

If you take the OTA study—say, you had a hall with 100 people. Something is missing, and they want to come forward. According to the OTA study, you would have 12 polygraph tests that would be incorrect. Given the false positives and false negatives, what it would say is that eight innocent people would be labeled guilty and four who are guilty would be labeled innocent, if they volunteer, under the most conservative of the studies, and 35 percent of the examinations are inconclusive.

So, here you have 35 people of that 100 in that building. They are under a cloud—their tests are inconclusive. You have eight people who are innocent and who are going to be labeled liars or deceitful, and you are going to have four who may be lying about it, who, under these tests, will be cleared. What possible sense does that make?

We have been through this. We have worked out the formula about how this can be used and used under restricted circumstances as a part of an investigation of specific incidents. The example that is given, I find, substantiates that point and makes it even less convincing than before.

Mr. QUAYLE. Mr. President, will the Senator yield?

Mr. KENNEDY. I yield.

Mr. QUAYLE. If you take that hypothetical of 50 people, I would think that maybe only one or two or three people want to come forward; because most people, frankly, including myself, do not want to take a lie detector test under any circumstances. But there might be somebody who wants to come forward, and you are precluding that one person, not all of them. Is there not some concern about someone who voluntarily wants to come forward?

Mr. KENNEDY. A hundred are in there, and they are missing a shoe box: "Now, Harry, Jim just came in and volunteered and he is free. He is not guilty. Do you think you would like to volunteer? You would or you would not want to volunteer?"

Let us be realistic about these circumstances. We have the conditions now where those tests can be requested and how those procedures would be made.

Mr. HATCH. Mr. President, I admire my colleague from Minnesota and what he is trying to do. I have to say that I know his intentions are very good, but I happen to disagree, and I will say why.

We have carefully crafted this section on post employment so that I think it basically takes care of his problem. I do not want to have his amendment in the bill for a very specific reason.

First of all, under section 7(2)(d), limited exemption for ongoing investigations:

Subject to section 8, this Act shall not prohibit an employer from requesting an employee to submit to a polygraph test if—

(1) the test is administered in connection with an ongoing investigation involving economic loss or injury to the employer's business, including theft, embezzlement, misappropriation, or an act of unlawful industrial espionage or sabotage;

(2) the employee had access to the property that is the subject of investigation;

(3) the employer has a reasonable suspicion that the employee was involved in the incident or activity under investigation; and

(4) the employer—

(A) files a report . . .

Where this type of language is included in State laws, the record in our committee is replete with examples where it has been the subject of considerable abuse. We are now under the third revision of this amendment. It seems to me that this substantiates that the way this was crafted in the committee, after a good deal of consideration, makes excellent sense.

I think it takes care of almost every situation, except one, and that is this: If we adopt the amendment of the distinguished Senator from Minnesota, then basically an employee who may be one of a number who are under suspicion, where there is a reasonable suspicion, may say, "I will be glad to take the lie detector test," and it may be the guilty employee, figuring that you can beat the lie detector, which you can. Sometimes, the most dishonest people can beat it. The most honest are the ones who are a little jittery about a lie detector test. Let us say there are three or four others there who are under reasonable suspicion.

One of them may be an extremely nervous person who just has heard that lie detector tests are not accurate. If they heard that they are right. They are not accurate.

Under the very best of circumstances which I described earlier they would be accurate maybe 85 percent of the time, but 15 percent that poor fellow is going to be thinking "because I am nervous and I am upset it is going to be inaccurate with regard to me."

So you develop a situation where the one who may be guilty may want the test and the other who is not guilty looks like he does not want the test and I think it becomes a subtle form

tive, why in the world are you allowing polygraph tests in the first place?

I mean I have never heard the percentage of 53 percent. If properly applied, the polygraph is certainly more effective than 53 percent. At least that is what the people in the security end of our Government have led me to believe. They sure believe in the polygraph test.

As the Senator knows, sometimes the security of the Nation is relying on the results of those tests. If it is so ineffective, why does the Senator make the exception at all? If we make the exception and allow the employer to make the request of an employee in the event that the employer makes an insurance claim or makes a report to the police of a missing item which is really not a very complicated procedure to make, then if the employer under those circumstances can make the request, certainly the employee should be able to make the request.

We would take out the word "prospective" employee. Very frankly, I, during my business career, had any number of break-ins, and thieves in our buildings. We had buildings all over the place. The police came in. It is not a very complicated matter to file some kind of a report with the police and thereby give the employer the opportunity to make a test.

So I ask my friend from Massachusetts once again. If we take out the words "prospective employee" and only apply the polygraph test to employees who wish and make that request, then why should it not be acceptable when he allows the employer to make a similar request?

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, just in response as to why we still permit it, the figures I gave the Senator were the correct ones. You have some that are incorrect and some that are doubtful, is the way this particular study that was conducted referred to in the OTA study, but just in terms of the study that is referenced in the OTA study on page 65.

But let me come to this: We only permit it then under very limited sets of circumstances. But let me just get back to the proposal. In the amendment of the Senator from Minnesota, he says exemption for the voluntary test.

> This act shall not prohibit an employer or agent of the employer from administering a lie detector to an employee or prospective employee if the employee requests a test and the employer or agent administering the test informs the employee that taking the test is voluntary.

Will you have that employer saying, look, this is voluntary. It is the employer telling that individual it is voluntary. I just find that given the record, Mr. President, as just being unrealistic. If we have eliminated the preemployment circumstances, now we are just taking those that are working. We set out where the individual will take that voluntarily under the circumstance of the bill. We are trying to move back from those other kinds of incidents. I just think that the record is so replete with instances of coercion, so replete with it that it just is not worth doing.

The way that this is crafted is the result of careful consideration of both the State laws, the professional testimony of the various polygraphers, and we have tried to devise a way both in terms of the business and the workers looking after each of their interests. I think we have been able to thread that needle in a rather different way. It is different from where the House came out. That is why we have been able to get the broad support from the business community that has opposed the House bill—nine different trading organizations with broad support.

I think what the amendment of the Senator from Minnesota is talking about would open up this whole proposal in a completely unworkable way, and still include the types of coercions, and exploitation that we have seen in the past.

Mr. President, I move to table the amendment.

Mr. BOSCHWITZ addressed the Chair.

The PRESIDING OFFICER. Would the Senator withhold?

Mr. KENNEDY. Mr. President, I think we really have to get action. We have taken a good deal of time. I would be glad to withhold for a couple of minutes. We waited for the good Senator for a good deal of time. I am glad to, if he wants to make additional comments.

Mr. QUAYLE. Could I have 3 or 5 minutes to make sure I understand?

Mr. BOSCHWITZ. I want to respond to the Senator and ask for indulgence so we do not move to table the motion. We have not discussed the motion at great length. And we are not going to discuss it at great length but we want to have a fair amount of time. So I respectfully request we not move to table this at this time.

Mr. KENNEDY. The Senator is persuasive as always.

I cannot wait to hear from my friend from Indiana, and I always enjoy his eloquence on this subject matter. So we withdraw the motion.

The PRESIDING OFFICER. The Senator withholds his motion.

Who seeks recognition?

Mr. QUAYLE addressed the Chair.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. QUAYLE. Thank you, Mr. President.

I see my dear friend from Massachusetts has seated himself to listen to what the Senator from Indiana has to say in a few brief moments. He did not want to stand up, and then have to sit down.

Let me make sure that I understand this amendment assuming that prospective employee is dropped. I want to make sure that the Senate understands what it is going to be voting on.

Let us take an example where there has in fact been a theft in a plant, and the employer decides not to polygraph the people, say there is a section out there where the theft occurred and there are 20 people, 30 people, or 50 people in that section. And there has been a theft. There has been something done that puts a cloud over that whole section of all the employees that are there.

The employer says "I am not going to go through the time of polygraphs. As a matter of fact, I just do not want to waste time to do this." However, an employee in that section says, "Wait a second. I may want to go on to another job and I certainly don't want anything on my record or anybody to think that I was involved in this. And I demand and I want to have a polygraph. I want you to polygraph me."

The employer says, "Well, if you want to, OK." Now, I believe that is what the amendment of the Senator of Minnesota is going to. It goes to where you have an entire cloud that could be passed over a lot of employees. And what you are going to be doing is showing the degree of really involving ourselves in these employer-employee relationships. The employee may say, "I want to clear the record; I as an individual."

What we are saying is no, that individual cannot do that, no matter what. I believe we are going very far. I know the Senator from Massachusetts is a strong proponent of individual rights and civil liberties. And he takes a back seat to no one. But I want him to think of that particular situation of where an employee that has a cloud cast over the section, where they work, and he or she says, "You know, I want to make sure that they know that I am not involved and I want to, I myself want to go forward and ask for this polygraph." The employer says OK.

We are saying it would be prohibited under the bill, but would be allowed under the Boschwitz amendment. I think that makes common sense. I think that is the only decent thing we can do. I do not believe this amendment is that controversial. I think it goes to a very narrow fundamental point; that is, if an employee volunteers, I think the Senator from Massachusetts makes a good point that these prospective employees perhaps think there would be this intimidation factor. But an employee who wants to clear the air, clear the record, comes forth and says, "You give me a polygraph" and the employer says "OK," it is precluded. It would be allowed under the Boschwitz amendment. It goes to a very, very narrow situation, one that I hope the sponsors of the bill might agree to. I do not believe it is going to do that much damage to this piece of legislation.

have similar kinds of requirements, and they have been just open-ended invitations to employers to say "Well, look, this is all voluntary, Mr. or Miss so-and-so, and we can't fire you or require you to take it as a condition of employment." You can imagine how that works in the various employment halls or personnel centers around the country. There is just instance after instance where this has created an enormous loophole.

In the legislation we do provide that when there are circumstances where there is reason to believe that an individual has been involved in some wrongdoing, the employer can make a request of the employee to take the lie detector, and the individual can either take it or not take it. We spell out exactly the circumstances when that will or will not be available.

So we do in the legislation permit an employer to make that request, and in a sense it is voluntary. There has to be other evidence besides the fact that the employee did not take the test if the employer wants to dismiss that employee. That is all laid out in the legislation.

It seems to me that that provides the kind of safeguards that are necessary in terms of assuring both the employer's interest and the employee's.

Basically, where similar kinds of legislation have been put into effect in the several States, there has been a wide record of abuse. They say it is voluntary, but the overwhelming evidence—and we have evidence in our committee records from Maryland and other cases, other than the State of Minnesota, which we have reference to in our record—just creates an absolutely enormous loophole.

It is really for those reasons that the Senator from Utah and myself find it difficult and unacceptable. I will be glad to yield.

Mr. BOSCHWITZ addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. BOSCHWITZ. The distinguished senior Senator from Massachusetts points out the Kamrath case in Minnesota where implicit coercion was indeed found and where damages were awarded to the employee. The courts will protect the employees where there is implicit coercion.

The distinguished Senator from Massachusetts says the employer will make this request of the employee, under certain circumstances. Why cannot then the employee make a similar request of the employer? Why should he not have the right to make a similar request?

I think indeed there has to be other evidence. My friend from Masschusetts says that in the event the employer makes the request and the employee says no, there has to be other evidence before you can dismiss the employee. In the real world, other evidence can always be found, and other evidence is a very subjective type of thing. The other evidence, I presume, does not have to relate to the appearance at hand.

Really that is not very much protection at all, and I ask that the employee have at least the same rights that the employer has.

I would say to my friend from Massachusetts, I note that my amendment talks about administering a lie detector test to an employee or prospective employee. I would tend to agree with the Senator from Massachusetts when he says that you can ask somebody before he becomes an employee, "Would you be willing to take a lie detector test?" In the event a person says no and the employer would no longer consider that employee, I do not understand that that is permissible under this law, and it is not really covered by my amendment.

I wonder if the Senator from Massachusetts and the Senator from Utah would accept the amendment if we removed the term "prospective employee" so that there would not be consideration or a feeling, in the event a prospective employee does not volunteer to take a lie detector test, that he would not be considered.

For instance, the employer does not even really have to ask a prospective employee. As the distinguished Senator from Massachusetts points out, the employer can make it quite well known to an employment agency, for instance, that "we like employees who will come and volunteer to take lie detector tests." The employment agency will find a way to say to a prospective employee, "I would mention, if I were you, when you talk to this fellow that you suggest that you are willing to take a lie detector test." That can almost become a condition of employment. I agree.

In the event we take "prospective employee" out of this, and it would just be an "employee" rather than a "prospective employee," that certainly should make the amendment more palatable.

As a businessman, I have never used, and I wonder if the distinguished Senator from Utah is in the Chamber or nearby because I would like to hear his thoughts about it as well, but as an employer over many years, employing as many as 1,200 people at any one time, and often having had experience with theft and often having some very difficult moments with employees about it, I did not use it for employees and had never even considered using it for prospective employees.

Would that make the amendment more palatable, I would ask my friend from Massachusetts?

Mr. KENNEDY. I would answer the Senator, it really would not because basically what we are talking about is the real potential for coercion. In the preemployment situation, what individual is going to go to the extent of bringing a case, paying the expenses, following all the way through the legal process in order to get, what, in terms of damages? It is basically unrealistic, and it is extremely difficult for me to understand——

Mr. BOSCHWITZ. Would the——

Mr. KENNEDY. Let me just finish one other point. It is extremely difficult for me to understand why an employee would take the test in the first place when, under the OTA study it says only half, "53 percent of the test subjects were correctly identified by the polygraphers." It is a flip of the coin. That is what we are dealing with, and the only way we can understand it. It is difficult for me, in common sense values, to think someone is going in there to say voluntarily, "Give me a polygraph" with a 50-percent chance of being caught wrong, unless there is going to be some type of coercion. We permit it under limited circumstances described as an investigatory tool.

Given the record that we have, preemployment, it is virtually difficult, if not impossible, to expect that there would be cases that would be brought into the court system. In the postemployment situation, which is the Minnesota case, the Kamrath case, that individual had to come into court and demonstrate by the evidence that they had nightmares and bed wetting in order to get a judgment. Now who in the world is going to do that when we have testimony before our committee that it has been used in the States where they have these sort of protections: will not be used to coerce or solicit or required be taken. Virtually the identical words.

I have difficulty being persuaded. I understand what the Senator is trying to do. I just find it difficult to be persuaded that even adjusting it from the preemployment to the postemployment, without the kind of protections that we included, that the polygraph would be useful.

Mr. BOSCHWITZ addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. BOSCHWITZ. I must tell you I respectfully think that my friend from Massachusetts has missed the point. We will take out the "prospective employee." We will only leave in the "employee" so that you cannot submit a person to a lie detector test as a condition of employment which, as I say, really can be implicitly done. The employer does not have to say anything to the employee directly. As you mentioned, he lets it be known to the employment agency in advance that he wants employees who will take lie detector tests. I can see where coercion could occur, but an employee who is already in the firm, if you want to put them in the firm for 3 months or something, fine, but take out the words "prospective employee" wherever it occurs in the amendment. Then an employee should have the right.

I would ask my friend from Massachusetts, if it is only 53 percent effec-

sometimes persuasive and sometimes not around this body.

But I am not able nor would I at this time give the assurances that we are going to be willing to accept that on this particular measure at this time.

Mr. METZENBAUM. Mr. President, will the Senator from Massachusetts be good enough to give me assurance that he will protect my position before closing down for the night?

Mr. KENNEDY. I would be glad to notify the Senator when we are closing or we are not able to make further progress on further amendments. I will certainly do that.

Mr. METZENBAUM. So I will have an opportunity. I do not wish to interfere with the Senator's handling of the bill. I want to be able to at least have an opportunity to offer this.

Mr. KENNEDY. Yes; I will be glad to notify the Senator.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BOSCHWITZ. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 1609

(Purpose: To permit an employer to administer a lie detector test to an employee if the employee requests the test)

Mr. BOSCHWITZ. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Minnesota (Mr. BOSCHWITZ) proposes an amendment numbered 1609.

Mr. BOSCHWITZ. If you would read the amendment?

The legislative clerk read as follows:

On page 28, between lines 14 and 15, insert the following new subsection:

(e) EXEMPTION FOR VOLUNTARY TESTS.—This Act shall not prohibit an employer or agent of the employer from administering a lie detector test to an employee or prospective employee if—

(1) the employee or prospective employee requests the test; and

(2) the employer or agent administering the test informs the employee or prospective employee that taking the test is voluntary.

The PRESIDING OFFICER. The Senator from Minnesota is recognized in support of his amendment.

Mr. BOSCHWITZ. Mr. President, this amendment would allow an employee or prospective employee to voluntarily ask to have a polygraph test. It is not a condition of employment. It cannot be made a condition of employment by this bill. Nor does this amendment intend to create that result.

The polygraph test, Mr. President, has proven its worthiness in assisting defense agencies in guarding national security, and Congress has repeatedly endorsed the polygraph for the purpose of preserving national security.

Similar security considerations really should be able to apply to the private sector.

In 1985 the House of Representatives voted 331 to 71 for an amendment which would allow the Department of Defense to increase polygraph screening of personnel with access to sensitive information. The Senate agreed to a conference report containing these polygraph provisions.

In 1987 a similar vote occurred, 345 to 44, for an amendment to the defense authorization bill that established a permanent polygraph program for national defense agencies.

The Senate voted 89 to 6 to accept conference reports that contained those permanent polygraph provisions.

Mr. President, Congress has clearly expressed its support for polygraph as a means of ferreting out possible illegality within the Government in the areas of defense and the areas of security. If polygraph works for the Federal Government, it certainly should work equally well for the private sector in its battle against illegal conduct in the workplace. When you consider drugs and the distribution of drugs and other such things, certainly the public needs to be protected.

Employee theft raises the cost of goods. The U.S. Chamber of Commerce reports that it raises them significantly.

The Drug Enforcement Administration, which supports polygraph screening, estimates that over 1 million doses of drugs each year are stolen from drug retailers, wholesalers, distributors, hospitals, and the like. Crime in the workplace is really quite a serious threat to the economy. It can bring a whole company down.

In my experience as a businessman, Mr. President, I have often had that problem. Interestingly, I have never used a polygraph. But that this amendment would do is allow an employee to come to an employer and say, "I know that there is thievery going on." And unfortunately, it is a common occurrence in business. "And I want to take a polygraph in order that you know that you can rely upon me." That option should be open to an employee and under this bill it is not.

This amendment is really an encapsulation of Minnesota statutes, and in Minnesota this amendment has been made part of the law and really simply preserves an employee's right to request a test.

The evidence in Minnesota suggests that it has worked very well; that there has not been abuse, and I understand and agree that we should protect employees against such abuse. But it really in no way alters the approach taken by this bill for the employees in the use of polygraph. It is the employer which we seek to regulate, not the employee, and therefore I offer this amendment as an effort to give employees, honest employees, employees who want to protect not only their own position, their own job, but who want to protect their place of employment, an opportunity to ask for a lie detector test.

It will not be used in every instance, I am sure. It may be that the very suggestion by an employee to his employer that he wants to take a polygraph test will be enough in most instances, as I would assume it would be, for an employer to believe that this employee at least is not guilty of some of the problems that they may be having.

In my years in business, Mr. President, time and again I had that problem, and they are very difficult problems. I often had employees and their wives and their families approach me. Those were very difficult things to do in the conduct of business, to say to a person "you have to leave us because we believe you are stealing" or in some instances even proof was available and in some instances not. It is a very difficult situation. The use of a polygraph in such situations helps both the employer and the employee. It helps people protect their jobs and helps people protect the companies for which they work.

Many companies, Mr. President, have been brought down, many companies have had to go out of business due to employee theft, due to very many situations where people have acted in contravention of the law. So it is important that we allow the employee every ability to prove his innocence and to continue the business of his employer.

Mr. President, I understand that the managers of the bill will not accept this amendment. I would ask that they respond.

I yield the floor.

Mr. KENNEDY. Mr. President, I understand the purpose for which this amendment is offered. Under the best of circumstances, I imagine that the Senator from Minnesota is trying to offer opportunities to those individuals who truly want to take a polygraph and permit those circumstances to be available under this legislation. So I understand what the purpose is.

The amendment of the Senator from Minnesota is very closely patterned after the State law. As I understand, in Minnesota employers can solicit or require the polygraph.

Now, Mr. President, there are similar laws in a number of the different States, and what we have found even in the State of Minnesota, in the Kamrath versus Suburban Bank case of 1985, even though it might look voluntary, inevitably there is a sense of coercion when the States have prepared legislation that even indicates that they cannot solicit or require. The Kamrath case in Minnesota pointed that out.

But there are cases in Maryland, cases in Pennsylvania, in California, other States besides Minnesota which

either increase production, to reduce imports, or to increase exports of steel, presumably at higher value-added categories. Otherwise, this is a bad loan.

So the position the World Bank is in is that it is either making a loan that can only pay for itself if Mexican production increases and imports decrease—imports of some of that steel at higher value added from the United States—and/or if their exports to countries like the United States increase.

I point that out because the argument for this loan is, "Don't worry; it's not going to hurt anybody."

Well, if it is not going to hurt anybody and it is not going to help anybody in Mexico, it is a bad loan.

So the World Bank, in my judgment, cannot make a consistent argument. It is either a bad loan that will not earn its keep or it is a loan that will earn its keep in way that is bound to affect international steel trade; and if there is one thing we know it is that we have enough steel capacity in the world, probably 100 percent more than we need. It is against everybody's interests to have institutions such as the World Bank putting more money into an industry with overcapactiy at subsidized rates. That just subsidizes more capacity or the upgrading of more capacity, and there is no justification for that. If people want to do it using money at nonconcessional rates, that is something else; but these are public funds, world funds, at concessional rates.

I made these argments in the course of a discussion within the hour with the president of the World Bank, Mr. Conable. I had hoped that these arguments would be persuasive to him and that he would withdraw the loan for consideration from the Bank's agenda tomorrow.

I am in the position of having to carry bad news to the Senate and to my constituents and to the American taxpayer. Barber Conable, who was very honest and direct, said: "I can't withdraw this loan. It will be put up to a vote tomorrow."

The implications were, I am sorry to say, that he thought it would be approved by the World Bank board, notwithstanding the vote of our U.S. Executive Director.

I suspect that he is probably right, because if there is one thing he did learn—he was in the House of Representatives, as ranking member of the Ways and Means Committee—it was to count votes.

I bring this to the attention of our colleagues because I think we should try to do something about it. What I want to urge is that this body at least take the modest step of going on record now against this loan. I do not doubt that should the loan go ahead—and I hope it will not—we may have to take additional action. But the most honest thing we can do is to express the policy of this body in the type of resolution that the Senator from Ohio [Mr. METZENBAUM] introduced yesterday. I see that he is on the floor, and I do urge him to offer his resolution. I will support it, as one might guess from my remarks, in the strongest possible terms.

Mr. President, I do not wish to impinge upon the debate right now, and I yield the floor.

POLYGRAPH PROTECTION ACT OF 1987

The Senate continued with the consideration of the bill S. 1904.

Mr. NICKLES and Mr. METZENBAUM addressed the Chair.

The PRESIDING OFFICER [Mr. FOWLER]. The Senator from Oklahoma.

Mr. NICKLES. Mr. President, what is the pending business?

The PRESIDING OFFICER. The pending question is the amendment of the Senator from South Carolina.

Mr. NICKLES. Mr. President, I urge the adoption of the amendment, as amended.

The PRESIDING OFFICER. Is there further debate on the question? If not, the question occurs on the amendment of the Senator from South Carolina.

The amendment (No. 1607), as amended, was agreed to.

Mr. NICKLES. I move to reconsider the vote by which the amendment was agreed to.

Mr. KENNEDY. I move to lay that motion on the table.

Mr. President, I see the Senator from Ohio on the floor. I know that he is very interested and committed on this issue. I would like to find out what the desire of the Senator from Ohio is. We would obviously like to cooperate. We know he feels intensely about it.

I inquire: What is his program?

The PRESIDING OFFICER. The Senator from Ohio (Mr. METZENBAUM).

WORLD BANK STEEL LOAN

Mr. METZENBAUM. Mr. President, I want to announce to my colleagues that we offered this resolution yesterday. It is a sense-of-the-Senate resolution which specifically provides that it is the sense of the Senate that the purpose of the loan is not in the best interests of the United States or in the best interests of Mexico's own economic revitalization, and the Government of the United States should use its best efforts to prevent approval of that loan.

After a meeting with Jim Baker, the Secretary of the Treasury, this morning, which was called by Senator BYRD, with the assurance of Secretary Baker that the United States would vote against the loan, I had hoped that, at a minimum, the World Bank would see fit to postpone this issue.

I had hoped that we would not have to get into this again today, because I thought that the World Bank would postpone the matter while we discussed it further.

However, according to Senator HEINZ, we have been informed by Barber Conable, the president of the World Bank, that they are going ahead with the vote tomorrow, which means they are going to approve the $400 million loan to Mexico.

Sometime before the evening closes, I will be prepared to offer a sense-of-the-Senate resolution as an amendment to this bill or as an amendment to a pending amendment. The manager of the bill has indicated that he would hope we would hold off for a bit, in order that he might try to get the bill closer to fruition. I am perfectly willing to be cooperative in that respect, with an assurance from him that before the bill is closed down, the Senator from Ohio, the Senator from Pennsylvania, and the Senator from West Virginia, who have an interest, would have an opportunity to come forward.

In view of the vote that will occur tomorrow, I feel that it is imperative that we act this evening. As long as the Senator from Massachusetts has indicated to me that he expects to finish this bill tonight—on that assumption I have no reason to go forward with the amendment now. If, for some reason, we do not finish the bill tonight, I hope I will have the assurance of the Senator from Massachusetts that an opportunity will be made so that we can offer this amendment, because offering it tomorrow will be after the fact.

Does the Senator see any problem with that?

Mr. KENNEDY. Is it the intention to offer it on this bill?

Mr. METZENBAUM. Yes. The intention is to offer it as an amendment or a second-degree amendment on this bill. I do not believe there is any opposition, with the possible exception of one Member. I may be wrong about that. There is tremendous interest by those Senators who have steelmaking operations in their States. I think there are 36 members of the steel caucus, on both sides of the aisle.

The answer is, yes, I do intend to offer it on this bill, because I cannot get it to a vote otherwise.

Mr. KENNEDY. I recognize the Senator's position and am in sympathy with it. We are in a situation now where we are not going to get final action on this, and I will have to reserve my position.

I want to make that clear to the Senator from Ohio. I have made a commitment that we keep off matters that were not relevant to this. I feel committed to that position. I voted against the position last evening with regard to labeling which I strongly support in terms of its merits. I have given those assurances to the floor.

I know this is an exceptional set of circumstances, and I am in sympathy with what the Senator is trying to do. He might be able to find that I am

Mr. KENNEDY. I withhold for 2 minutes. I ask consent that I be recognized after 2 minutes.

Mr. NICKLES. If the Senator would give me about 4 or 5 minutes.

The PRESIDING OFFICER (Mr. EXON). Is there objection to the 2 minutes?

Mr. KENNEDY. You cannot object, anyway. I will give you 4 minutes.

The PRESIDING OFFICER. The Senator from Oklahoma [Mr. NICKLES] is recognized for 4 minutes, and then the Senator from Massachusetts [Mr. KENNEDY] is recognized.

Mr. NICKLES. Mr. President, statement made by the armored car industry were that they transport and store over $15 billion per day. Of the majority of monetary losses from the industry, 65 percent result from internal theft.

Furthermore, I might mention employees in this industry frequently are required to carry guns.

I also mention one other result if we do not adopt this amendment. You are going to have a lot of airports not able to use the polygraph to screen those security guards. If the cities themselves hire the security guards, then they could do it. But a lot of airports use private firms to provide for security at the airports, screening, et cetera.

If this amendment is adopted, those private firms would not be entitled to use the polygraph. Again, let us think about that because we have had a lot of terrorism, a lot of it in other countries involving airports.

It would seem to be a terrible thing for us to be telling private firms that only a city can use the polygraph. Let us make sure we keep terrorists out by screening people as they enter the aircraft or coming through the airports, but a private firm, who may have been providing that function to the city for years, would not be entitled to do it.

Again, we keep the same protection that the Senator from Massachusetts and the Senator from Utah do to protect employee rights. We would just allow those private firms who are engaged in security and protection of employees and property in this country to continue the use of the polygraph.

I hope the Senate will reject the motion to table.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. I move to table the underlying amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the motion to table the underlying amendment.

The yeas and nays have been ordered.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Tennessee [Mr. GORE] and the Senator from Illinois [Mr. SIMON] are necessarily absent.

I also announce that the Senator from Delaware [Mr. BIDEN] is absent because of illness.

Mr. SIMPSON. I announce that the Senator from Kansas [Mr. DOLE] is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 20, nays 76, as follows:

[Rollcall Vote No. 36 Leg.]

YEAS—20

Armstrong	Evans	Metzenbaum
Bradley	Ford	Mikulski
Cranston	Harkin	Proxmire
Danforth	Hatfield	Reid
Dixon	Heinz	Stennis
Dodd	Kennedy	Weicker
Durenberger	Leahy	

NAYS—76

Adams	Grassley	Packwood
Baucus	Hatch	Pell
Bentsen	Hecht	Pressler
Bingaman	Heflin	Pryor
Bond	Helms	Quayle
Boren	Hollings	Riegle
Boschwitz	Humphrey	Rockefeller
Breaux	Inouye	Roth
Bumpers	Johnston	Rudman
Burdick	Karnes	Sanford
Byrd	Kassebaum	Sarbanes
Chafee	Kasten	Sasser
Chiles	Kerry	Shelby
Cochran	Lautenberg	Simpson
Cohen	Levin	Specter
Conrad	Lugar	Stafford
D'Amato	Matsunaga	Stevens
Daschle	McCain	Symms
DeConcini	McClure	Thurmond
Domenici	McConnell	Trible
Exon	Melcher	Wallop
Fowler	Mitchell	Warner
Garn	Moynihan	Wilson
Glenn	Murkowski	Wirth
Graham	Nickles	
Gramm	Nunn	

NOT VOTING—4

Biden	Gore
Dole	Simon

So the motion to lay on the table Amendment No. 1607 was rejected.

Mr. HEINZ and Mr. GRAMM addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. NICKLES. Mr. President, will the Senator yield for just a moment?

Mr. HEINZ. I yield without losing my right to the floor.

Mr. NICKLES. We have not yet disposed of my amendment. Can we do that first?

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from Oklahoma.

The amendment (No. 1608) was agreed to.

Mr. NICKLES. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HEINZ. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

WORLD BANK STEEL LOAN TO MEXICO

Mr. HEINZ. Mr. President, earlier today Members of the Senate Steel Caucus which is chaired by Senator METZENBAUM, myself, Senator BYRD, Senator SIMPSON, and others met with the Secretary of the Treasury, Jim Baker, to take strong exception to the plans of the World Bank tomorrow to act on a $400 million loan to Mexico for the benefit of their steel industry.

Part of our reason for meeting with Secretary Baker was to ascertain what our Government's position on this loan might be. The scale and scope of this loan is such as to be a very grave concern; that is, $400 million, a substantial portion of which represents a financial commitment by the United States and our taxpayers to a steel industry that currently produces about 5 million tons from about 10 million tons of capacity annually, compared to a U.S. industry that has about 100 million tons of capacity and when healthy is producing 70 or 80 million tons annually. And one might therefore compare that $400 million World Bank so-called loan to the equivalent of a $4 billion financial package of assistance to the American steel industry, if not more.

I call it a so-called loan because it is a deal that nobody could ever get in the private sector. It has a very generous term. It is a 15-year loan, it is at below market interest rate, and the nice thing is for the first 3 years the money is absolutely free. Would it not be nice if Americans, whether they are steelworkers or in the steel industry, could get free money, $400 million, let alone $4 billion for 3 years? I think we would be all very happy about that.

In following up a discussion that we had with Secretary Baker in which we all voiced our concerns about tomorrow, we urge Secretary Baker to express our concern to the president of the World Bank, Barber Conable, who, as a former colleague of many of ours from the House of Representatives, we have a great deal of respect for, and to urge Barber Conable to withdraw or postpone the action that the Bank was intending to take tomorrow so that it could reconsider not only the merits of the proposal but the wider implications of the Bank's proceeding.

We also wanted, as I say, to find out whether our Government intended to support, by the vote of our U.S. Executive Director to the Board of the World Bank, that loan. And we urged, of course, as one might expect that a proposal that we felt was ill-advised in the first place and certainly hastily considered, we were only informed of this within the last 48 hours—that our U.S. Executive Director should vote against that loan. But it does not do anybody very much good if the U.S. Executive Director votes against the loan and it goes through anyway.

If the loan is to have any economic value to it, the effect has to be to

The PRESIDING OFFICER. Let us set the record straight. You should come through the Chair to the Senator and we will keep the procedure in the proper perspective here. If the Senator will yield, why, then we will proceed from there.

Mr. NICKLES. I am just trying to respond because I think the Senator from Massachusetts makes a good point. Let me read exactly what the amendment says. It says:

> Subject to paragraph (3), this Act shall not prohibit the use of a lie detector test on prospective employees of a private employer whose primary business purpose consists of providing armored car personnel, personnel engaged in the design, installation, and maintenance of security alarm systems, or other uniformed or plainclothes security personnel and whose function includes protection of—
>
> (A) facilities, —and on and on.

I guess there is no real argument against armored car personnel; personnel engaged in the design, installation and maintenance of security alarm systems—these are the individuals who design, maintain, install security alarm systems in private homes. They are the people that I am talking about, if a person calls and says: I am worried about somebody breaking into my house. Maybe they have a lot of valuables or something in their house, so they call up a protective service and say: Would you please design a system that will help to protect my home. And maybe it will be electronic, maybe it will be sound, maybe it will be lights, maybe it will be a combination of things that will ring at the police department—these systems are available in most cities.

But the individuals involved go out to their home and they check the windows, they check the doors, they check the entrances to the homes and they design and they install and they maintain alarm systems to protect that home.

So, they are very vulnerable, so what this amendment allows in those companies that provide those services, since they are given such a large degree of confidence by the homeowners to protect their house, it allows those firms the right, before they hire this individual, to use the polygraph.

It says the polygraph cannot be the only reason they would not hire him. They would have to have some other evidence to not hire that person, so it still provides the protections as the Senator from Massachusetts did in his preemployment use of the polygraph, but it would say that these people, because of the nature of their job, since they are involved in security, would not be prohibited from using the polygraph.

Right now, if the Senator's bill passes, you are going to have all these private security companies unable to use the polygraph. I just read some letters into the RECORD. One said that the author found 16 percent of the applicants disqualified because of the use of the polygraph. And that may mean that one out of seven or something like that, might have been entered people's homes, maybe with the purpose of breaking into their homes. I am not sure. But I would hate to think of the people's property stolen, I would hate to think of the physical harm that might come to them, because we did not pass this amendment; or because we passed the Senator's bill as is drafted right now without the House language. Basically the language that we have in this amendment is almost identical to the House language that passed in the House of Representatives.

It is a little bit different because the House bill was basically a prohibition on the use of polygraph altogether. Senator KENNEDY's bill does not go that far. He allows the use of polygraph. He says it is OK for the Department of Defense. He says it is OK for the CIA. My amendment would say it would be OK for firms that are installing protective systems in people's homes to use the polygraph. My amendment says it would be OK for armored car companies such as Wells Fargo or Brinks or other companies to use the polygraph as well, because we are entrusting a lot of security, a lot of valuables in these companies. A lot of value.

Now, if you have a person who is fairly intelligent and says, you know, I would like to steal a lot and I would like to do it a couple of times in a big fashion in a good way, and, therefore, instead of trying to go crashing through some door and find out nothing is there I think I would improve my odds if I went into homes that had security systems and maybe if I helped install that security system I would know now to turn it off; and, since I was in the home installing the system I would probably know something about the valuables that are inside that house. So, now I have installed the system, I know how to maintain it, I know how to turn it off, and also, since I have been servicing this home I know when they are not there.

It just makes sense. Well, if we are going to allow it to the Department of Defense, they are to protect us; we are going to allow it to the CIA, they are there to protect us, they have losts of sensitive information; the FBI, they are exempted because they are providing security, providing protection, let's allow the private firms that are also engaged in protection with the caveats of making sure that these tests are not used in an abusive manner—which is provided for in the Senator's bill. We provided for that in our amendment as well. So we are concerned not only about individual and employee's rights, we put in the identical protections that Senator KENNEDY and Senator HATCH have. We just expanded, and not only allow just the public sector to use preemployment tests, but also we would allow the private sector that is engaged in protecting individuals and property to use preemployment tests as well.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, that has been subject to a variety of different drafts. I point out that it still, as it is drafted, has the same kinds of openness, in terms of those that are involved in any kind of a design, any aspect of installation, any aspects of the maintenance of the systems. I think we are talking about the tens of thousands or hundreds of thousands of people and because of the arguments I made before, in terms of the unreliability as a preemployment device, and we tried to make that case earlier, I have trouble in seeing the justification or the wisdom of this.

I refer back not to just the statements that I make, Mr. President, but I will refer back to what the National Institute of Justice said. They are the principal research arm of the Justice Department on criminal activity. They are the principal guide to the Justice Department and to the Congress. This is what they said:

> We found that applying the law enforcement model to theft does not work very well. For example, assessing previous theft activity outside the work setting by using polygraph exams has little relevance to future workplace behavior.

Mr. President, I am mindful of what the Senator would like to do but I believe those that are concerned about security in their banks, all the rest, you pass this amendment, they hire various firms to go on out and get security guards; those security guards are given that polygraph, they pass it, they come right on in that bank. It creates a false sense of security. That is what all of the scientific and medical information is, and that is the conclusion of the principal institute of the Federal Government dealing with crime and criminal behavior. That is their conclusion. That is just not the conclusion of the chairman of the Human Resources Committee or the Senator from Utah. It is an agency of the Justice Department that studies these kind of issues and evaluates the various tests.

I think rather than increasing the security in these areas, we would be creating a false sense. I think the way we have balanced this in terms of the way of the program, in terms of creating a reasonable suspicion after the employment situation, we would hope they would use all the other investigative techniques and personnel reviews that are absolutely essential in the guarding of the areas the Senator has outlined.

But I would hope that the Senate would accept the amendment. I am going to move to table the underlying amendment.

Mr. NICKLES. Will the Senator withhold for a few minutes?

Therefore, it is imperative we empoly the most comprehensive applicant screening process possible—which includes the use of professionally administered (and state regulated) polygraph testing.

We have supportive data regarding our experience with the polygraph and would be more than happy to provide you with any information that would facilitate your efforts. Also, Mr. Nester Macho, special Advisor to the President of Rollins, would be glad to meet with you at any time to discuss our experience.

Mr. NICKLES. Mr. President, I have tried to make the point that we have retained all the protections that Senator KENNEDY and Senator HATCH have in their bill. Their bill allows preemployment testing by polygraph. This amendment expands that. They allow it in the public sector for the FBI and the CIA and for the police departments, for the fire departments, for public municipalities, and for the State and Federal Government. We expand that for private concerns that would use it in the protection service—if they are involved in transporting money, if they are moving a lot of currency, if they are moving money from the Federal Reserve. Most of the money that is moved from the Bureau of Engraving and Printing that prints the money to the Federal Reserve banks is moved by private concerns. This would allow those armored car companies to use a polygraph test to screen persons and find out if they are a terrorist, find out if they are convicted felons, find out if they have a record of drug abuse.

I think it is a good amendment. it does not reach too far. It is a limited amendment. It is a limited amendment trying to protect those persons who are engaged in these types of services.

It would exempt those who provide services industries, such a protective service for your home, so they could at least screen and make sure they are not hiring somebody that has a record of breaking and entering homes or auto theft. They could find out and possibly weed out some of those individuals.

One other example. I mentioned this earlier in my comments and may be it has been overlooked. But Senator KENNEDY's and Senator HATCH's bill allows a private contractor, if they are guarding a munitions facility for the Department of Energy, to use the polygraph. And I think they should. Really, if you have somebody that is building munitions, I think they should have that option.

This would allow them that same option for the same guards, same company—maybe the same guards—protecting a nuclear power facility. I would shudder to think that a guard in a company that was protecting a nuclear power facility, if they infiltrated a private company, worked their way to being at the right gate at the right time, they could allow some of their terrorists in, maybe plant a bomb and start a chain reaction that would lead to a nuclear incident in this country.

Right now the companies that provide security for nuclear power plants have the ability—and most of them use it—to use polygraphs to try to screen and weed out those persons who might have a terrorist background. This bill would prohibit that test. I think that would be a serious mistake.

The House agreed. The House debated this amendment thoroughly, and they passed this amendment. They said we should allow the use of polygraphs in these instances.

Again, this is not much further than what Senator HATCH and Senator KENNEDY have in their bill. I hope they would adopt the amendment. I believe it is a good amendment. It is one that I think has been well thought out. It does not allow a quickie test. It does not allow somebody who is not qualified to administer a polygraph.

I hope that they would agree to the amendment.

Mr. KENNEDY. Mr. President, I thank the Senator from Oklahoma for his explanation. I find it unconvincing. I would not expect that perhaps the Senator from Oklahoma might find it differently, as we do, in the area of preemployment. We do not permit the polygraph and we do not extend this to Federal, State, and local governments for a very important reason, and that is the constitutional protections. And it has not been found to be a problem.

Mr. NICKLES. Will the Senator yield?

Mr. KENNEDY. If I could just finish.

And so, that is basically the distinction on it. To suggest that, well, even under our bill there is permitted some preemployment testing that may be taking place is an accurate statement. I will say that. But, given the kind of other protections that we have found in our own review, we did not find there was sufficient problems compared to what is happening in the private sector to take action.

That is point No. 1.

Second, I want to point out about what the Senator's amendment really does. If you read through the "Exemption for Security Services" on the first page of the amendment, it talks about:

> In GENERAL.—Subject to paragraph (3), this act shall not prohibit the use of a lie detector test on * * * personnel engaged in the design, installation, and maintenance of security alarm systems.

"Personnel engaged in the design." I mean, is that every designer? Is it every engineer? Is it every draftsman?

Mr. NICKLES. Will the Senator yield?

Mr. KENNEDY. I will give you a chance for you to explain. I would just like to make the central point, and then I would be glad to yield for a response.

It talks about the design. You have "personnel engaged in the design." And Lord only knows what that means. But I think it is reasonable to assume it is design or engineering draftsmen.

"Installation." Is that every electrician? "Maintenance of security alarm systems." Is that every repairman? Is that every cleaner that, as a part of their routine job, goes out and cleans that system?

And then, it continues: "or other uniformed or plainclothes security personnel and whose function includes protection of," and then it goes (A) (i), (ii), (iii), (iv), (B). And then comes the kicker: "or property." Do we know how many security property guards there are that are listed? There are 500,000.

Mr. NICKLES. The Senator is not working off of the amendment. I am trying to make sure we are working on the exact same amendment.

Mr. KENNEDY. I think that is a fair point to make. That is the amendment that I was handed.

Mr. NICKLES. Could I answer the question of the Senator?

The PRESIDING OFFICER. Does the Senator yield for a statement of the Senator from Oklahoma?

Mr. KENNEDY. I will be glad to yield for a question.

The PRESIDING OFFICER. The Senator may proceed.

Mr. NICKLES. I would like to respond to the statement of the Senator.

Mr. KENNEDY. The Senator is correct with regards to the word "property." I had the first edition. It has been altered in the last few hours.

Mr. NICKLES. The amendment we submitted does not say "property."

Mr. KENNEDY. The one that was submitted as S. 1904 that has the Senator's name on it. Was this——

Mr. NICKLES. The amendment we sent to the desk, let me just read it——

Mr. KENNEDY. I see. Well, all we try to do in terms of the debate here is try to take the various amendments that are filed and circulated and then we examine them in terms of the debate and I apologize to the Senator. That was the one that was distributed with the Senator's name on it that was given to me. As I understand, it has been redrafted just prior to the time of submission and now has different language. Certainly I will adjust my remarks. I will review this now. We have been over here for a day and a half on this matter. I understand from staff that it still includes "design," which I referred to.

Mr. NICKLES. That is right.

Mr. KENNEDY. So all the relevant points I made with regard to design, draftsmen, is included, installation—everything I said about electricians is accurate; maintenance of security alarms, all the comments I made about those are accurate.

Mr. NICKLES. Will the Senator yield?

Mr. KENNEDY. Yes, I yield for a question.

What consolation is it to a mother and father whose child has been harmed, or a family who has had their possessions stolen, to have an investigation after the fact? If we have the means within our power, is it not better to work to reduce those opportunities of criminal misconduct?

Rollins Protective Services is one of the largest residential security system companies in the country, operating in 27 states. Orkin Pest Control is the world's largest structural pest control company, operating in 45 states and the District of Columbia. Together we send thousands of technicians and sales representatives annually into more than 1.3 million private residences. In numerous cases, because of customers' busy lifestyles, our employees even have keys to many of these customers' homes. This almost unlimited access could result in direct threats to the health and well-being of our customers and their families, as well as loss of their property, by employees with criminal motives.

An average citizen who would not consider allowing strangers access to his home is willing to do so if that stranger identifies himself or herself as an Orkin or Rollins Protective Services employee. We are proud of the fact that we have earned that trust through the years. We recognize that our responsibility, both morally and legally, is to continue to utilize the best methods available to protect our customers from the potential dangers arising from the access granted to their homes.

To date the polygraph, when used in conjunction with other pre-employment screening methods, is the most efficient and accurate method of protecting the consumer from unscrupulous job applicants. Since 1976, when we first instituted this screening program, we have substantially lowered incidents of employee thefts and other criminal behavior directed to our customers. Rollins spends over $1 million a year to screen applicants through a series of very comprehensive tools, including the polygraph. Not one of these tests is 100% accurate, be it the background check, motor vehicle check, psychological test, etc. However, when used together, these methods greatly decrease the likelihood of an employee being hired who would endanger one of our customers.

Presently 31 states recognize the benefits of the polygraph by establishing strict regulations that protect the rights of prospective employees while permitting private businesses like Orkin and Rollins Protective Services to utilize the best tools available to safeguard the welfare and property of its customers. These rules insure that the polygraph examinations are administered competently, fairly, and without bias. Without doubt, S. 1904 blatantly usurps the rights of these states to regulate the polygraph industry and is an unnecessary intrusion into the hiring practices of the private sector.

Further, there is no constitutional basis for a federal ban on polygraph testing in the private sector. Article 10 of the Constitution clearly states that the power not delegated to the United States by the Constitution, nor prohibited by it to the states, are served to the states respectively, or to the people. The majority of our states have accepted this responsibility and have already passed legislation regulating the polygraph. Some have even banned it. Clearly, this effort by the majority of our states signifies federal government intervention is unwarranted.

We will continue to make every effort possible to refine polygraph testing and comply with (if not surpass) all state requirements. After all, we are not in the polygraph business, but in the business of serving our customers and insuring their safety. Presently, the polygraph is one of the best tools we have to accomplish this. The American public should not be forced to withstand the dangers that could befall them should this legislation pass. With the rising crime rate, citizens rely on our industries to insure their safety—now they are relying on you.

We strongly urge you to ask for a hearing on the specific language of S. 1904 and the merits of S. 1854, the regulatory bill introduced by Senator Dan Quayle. We would welcome the opportunity to express the point of view of our industry before your committee.

Sincerely,

GARY W. ROLLINS,
President.

Mr. NICKLES. Mr. President, I will just read a couple other paragraphs from another letter. This is a letter from the Brinks Co. in Oklahoma City. It states:

On the other hand, this legislation prohibits private companies from using pre-employment polygraph screening, while allowing public agencies such as the police department and FBI to use the polygraph. Pre-employment screening is vital when interviewing for the sensitive security positions within our firm. We are the target of not only criminals, but also terrorists who seek to infiltrate security companies.

Mr. President, I ask unanimous consent that the letter be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

BRINK'S INC.,
Oklahoma City, OK, January 12, 1988.

Hon. DON NICKELS,
U.S. Senate, Washington, DC.

DEAR SENATOR NICKELS: Senator Kennedy recently introduced a bill which would restict the use of the polygraph by private employers. S. 1904 is expected to move quickly to the Senate floor.

As a company engaged in security work, I am very concerned about the impact of this legislation on my industry. S. 1904 would allow employers to liberally use of polygraph on employees whom they suspect have caused them economic harm. This harm does not even have to be reported to the police before the polygraph is used.

On the other hand, this legislation prohibits private companies from using pre-employment polygraph screening, while allowing public agencies such as the police department and FBI to use the polygraph. Pre-employment screening is vital when interviewing for the sensitive security positions within our firm. We are the target of not only criminals, but also terrorists who seek to infiltrate security companies.

In most cases, pre-employment polygraphing is as important than post incident polygraphing in the security business, as the harm that can be done is of such a large magnitude. For example, the FBI recently arrested members of the Matcheteros terrorist gang and charged them with an $8 million armored car robbery in Connecticut, a state where poygraphs are outlawed. The terrorists planted a member of their group inside an armored car company as a driver. He fled to Cuba with the funds, which were then used to fuel terrorism in Puerto Rico.

The House of Representatives recognized the special needs of security companies and included in the bill which just pasted the House, an exemption for these functions. An identical exemption was included in the bill which the House passed in 1986.

Frankly, we believe that polygraphs are best regulated at the state level. In fact, twenty-two states now have some sort of restrictions. However, if you believe the federal government should become involved, we would ask that you support an exemption for private security functions.

Sincerely,

JUNIOR STRAWN,
Branch Manager.

Mr. NICKLES. Mr. President, I have one other letter from the Rollins Co. in Dallas. It states:

Between Rollins Protective Service and Orkin Pest Control Company, we send thousands of technicians into more than 1.3 million homes nationwide. We spend over $1 million a year screening our applicants through polygraph testing as well as through a battery of other pre-employment procedures to reduce the chances of our customers being harmed by an unscrupulous employee. To do anything less may be costly, but it would be seriously irresponsible.

During the past ten years, we have denied employment to approximately 16% of those who applied because of repetitive drug use and criminal background which they admitted during polygraph testing. It is doubtful we would have been able to obtain this information through any other means.

It goes on to say:

However, in our case, we are concerned with human lives. Personal property can be retrieved—a human life cannot. Therefore, it is imperative we employ the most comprehensive applicant screening process possible—which includes the use of professionally administered (and state regulated) polygraph testing.

Mr. President, I ask unanimous consent that the letter be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

ROLLINS CO.,
Dallas, TX, February 19, 1988.

U.S. Senator DON NICKLES,
713 Hart Building, Washington, DC

DEAR SENATOR: As you can see, we are strongly opposed to this legislation because it seriously jeopardizes our ability to protect our customers. Between Rollins Protective Service and Orkin Pest Control Company, we send thousands of technicians into more than 1.3 million homes nationwide. We spend over $1 million a year screening our applicants through polygraph testing as well as through a battery of other pre-employment procedures to reduce the chances of our customers being harmed by an unscrupulous employee. To do anything less may be costly, but it would be seriously irresponsible.

During the past ten years, we have denied employment to approximately 16% of those who applied because of repetitive drug use and criminal background which they admitted during polygraph testing. It is doubtful we would have been able to obtain this information through any other means.

People are vulnerable in their homes (see attached article.) We understand some industries have agreed to support S 1904 which would prohibit all preemployment polygraph usage but allow it in restricted specific incident cases. For a bank or retail store, perhaps that is sufficient because they are concerned with reducing property losses. However, in our case, we are concerned with human lives. Personal property can be retrieved—a human life cannot.

The bill before us allows the use of polygraph for investigative purposes, and I compliment again the authors of the bill. I think that is a much needed provision because a lot of industries, when they find money missing, when they find valuables missing, they use the polygraph and the threat of the polygraph, frankly, to identify those persons responsible.

The Kennedy bill and the Hatch bill have some devices in it to protect from abuse of the polygraph, and I want the sponsor of the bill to be aware—if I can get Senator KENNEDY's attention—that the amendment we have has the same protections that he has in his bill.

I think the Senator mentioned the quickly polygraph or the 15-minute polygraph. We kept all the protections that he provided for in the bill, such as saying it had to be a qualified examiner, had to be 21 years of age, had to be a certain time period, still under regulations by the State, still under regulations of collective-bargaining agreements, et cetera. All the protections that Senator KENNEDY and Senator HATCH have in their bill are also in my amendment.

So what we have done as the sponsors of the amendment is to allow the use of polygraph for the public sector and also for post-incidents in trying to use it for investigative purposes. Our amendment says these private firms that are involved in providing security can use it in preemployment just as the CIA can, just as the FBI can, just as the Department of Energy who contracts out to private employers, those private employers who protect a nuclear weapons facility anywhere in the country. Since the Department of Energy can use a polygraph to screen employees, preemployment, this would allow that same compnay that is providing those services for the Department of Energy to also use the polygraph for those armed guards who are protecting a nuclear facility.

I think we have learned something when the Soviets had the Chernobyl accident, incident, or whatever you want to call it, disaster, that killed lots of people and caused a lot of damage. You realize how susceptible we might be if we had some type of nuclear incident in this country where we had a nuclear plant possible in Kentucky or Oklahoma or someplace, if a terrorist infiltrated that plant. Under the bill before us a company that employs a private armed guard right now cannot use a polygraph before they hire him and put him in that type of position.

Frankly, Mr. President, it would be far too late after that type of an incident to be trying to say. "Well, we are going to use polygraph to try to find out who was responsible for that event."

Maybe that person infiltrated a plant and caused a nuclear disaster at a powerplant.

Or maybe a little more on a mundane level but certainly very possible because it has happened, people have infiltrated armored car services. Maybe they went to work for one of the big armored car companies and infiltrated it, got on the inside and had an inside heist.

I have clips of one that was $7 million and it was an inside job. They even went to work in a State where polygraph was prohibited so they would not have a preemployment test in this one example.

I will be happy to put some information in the RECORD if my colleagues would like to see it.

But again the polygraph for some of these very important, very sensitive industries, has been a tool.

I might also mention to the sponsors of the amendment we put in the same protections that he did as far as preemployment—that this could not be the sole reason that an employer would not hire somebody. In other words, if they failed the polygraph they would still have to come up with additional support and evidence of why that person should not be hired.

So we take great lengths, as a matter of fact, the indentical lengths that Senator KENNEDY and Senator HATCH have, to protect individual rights and freedoms, but we just say that private employers who are engaged in providing for public security or security of bank funds or security of a large amount of valuables have the same access to a preemployment polygraph.

We have heard some statistics being bandied about, well 12 percent of these polygraph tests might be inaccurate and if they are, again we state that the employer would have to come up with some other substantiating evidence.

But you might turn that around and say, well, seven out of eight are accurate. What if you are a company that provides home protection devices, and there are major companies around the country that provide thousands of people that do so, would you not like to know that at least you would be able to screen and hopefully remove a large number of potential problems?

Let me read a couple of letters that came from individuals that hired these types of firms. I will not read the entire letters, and I will insert the letters for the RECORD, but I will read a few pertinent paragraphs.

One is from the Rollins Co. It is from the president of the Rollins Co. in Atlanta, GA. The letter states:

Evidently, the validity of the polygraph is not in question since the federal, state, and local governments and their divisions are allowed full usage of the polygraph. Doesn't the American homeowner, whose life and investments could be imperilled by just one unscrupulous employee, deserve the same protection? We also see that this bill further acknowledges the polygraph's validity by allowing its use in specific incidents during an ongoing investigation. While we totally agree with its value in these cases, we prefer to work to avoid those situations.

What consolation is it to a mother and father whose child has been harmed, or a family who has had their possessions stolen, to have an investigation after the fact? If we have the means within our power, is it not better to work to reduce those opportunities of criminal misconduct? An average citizen who would not consider allowing strangers access to his home is willing to do so if that stranger identifies himself or herself as an Orkin or Rollins Protective Services employee. We are proud of the fact that we have earned that trust through the years. We recognize that our responsibility, both morally and legally, is to continue to utilize the best methods available to protect our customers from the potential dangers arising from the access granted to their homes.

To date the polygraph, when used in conjunction with other pre-employment screening methods, is the most efficient and accurate method of protecting the consumer from unscrupulous job applicants. Since 1976, when we first instituted this screening program, we have substantially lowered incidents of employee thefts and other criminal behavior directed to our customers. Rollins spends over $1 million a year to screen applicants through a series of very comprehensive tools, including the polygraph. Not one of these tests is 100% accurate, be it the background check, motor vehicle check, psychological test, etc. However, when used together, these methods greatly decrease the likelihood of an employee being hired who would endanger one of our customers.

Mr. President, I ask unanimous consent that the letters be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

DECEMBER 17, 1987.

DEAR SENATOR, as President of Rollins, Inc., the parent company of Orkin Pest Control Company and Rollins Protective Service, I strongly urge you to vote against S. 1904, the "Polygraph Protection Act of 1987." I am joined in this request by the 1600 company members of the National Burglar and Fire Alarm Association and 2500 company members of the National Pest Control Association, as well as the Professional Lawn Care Association and its membership.

While recognizing the merits of the polygraph in the public sector, this bill arbitrarily denies its utilization in the private sector, except in specific post-employment situations. As a result, it unnecessarily jeopardizes the safety of the consumer who is served by any type of in-home service such as ours, because it severely diminishes the accuracy of our pre-employment screening process. Without the use of the polygraph, it is far more likely that someone would be hired who would use his employment for criminal purposes. In addition, S. 1904 is an unnecessary intrusion by the federal government into the hiring practices of the private sector, and it interferes with the rights of the states to regulate the polygraph industry, which it has done effectively in 31 states.

Evidently, the validity of the polygraph is not in question since the federal, state, and local governments and their divisions are allowed full usage of the polygraph. Doesn't the American homeowner, whose life and investments could be imperilled by just one unscrupulous employee, deserve the same protection? We also see that this bill further acknowledges the polygraph's validity by allowing its use in specific incidents during an ongoing investigation. While we totally agree with its value in these cases, we prefer to work to avoid those situations.

consist of three separate markings placed on a graph reflecting three separate physiological reactions. A rubber tube is placed around the subject's chest to record his breathing pattern on a pneumograph. That device records the respiratory ratio of inhalation and exhalation strokes. The second component is called a galvanic skin response which consists of electrodes placed on the examinee's fingers, through which a small amount of electrical current is passed to the skin. The galvanometer records the minute changes in electrical skin response. The third component consists of a cardiograph which is a tracing obtained by attaching a pneumatic cuff around the left arm in a manner very similar to an apparatus which takes blood pressure. When the cuff is inflated, that device records relative blood pressures or change in the heart rate.

From those testing devices, it is possible to measure psychological or emotional stress. This testing device is the product of observation by psychologists and physiologists who noted certain physiological responses when people lie. In about 1920 law enforcement officials with psychological and physiological training initiated the development of the instrument to serve as an investigative aid.

The polygraph may record responses indicative of deception, but it must be carefully interpreted. The relevant questions, as to which the interrogator is seeking to determine whether the subject is falsifying, are compared with control questions where the examiner obtains a known indication of deception or some expected emotional response. In evaluating the polygraph, due consideration must be given to the fact that a physiological response may be caused by factors other than deception, such as fear, anxiety, nervousness, dislike, and other emotions. There are no valid statistics as to the reliability of the polygraph. FBI Agent Herndon testified that, notwithstanding the absence of percentage indicators of reliability, an informed judgment may be obtained from a well-qualified examiner on the indications of deception in a normal person under appropriate standards of administration.

Ordinarily during a polygraph examination only the examiner and the examinee are present. It is the practice of the FBI, however, to have a second agent present to take notes. It is normally undesirable to have other people present during the polygraph examination because the examinee may react emotionally to them. Because of the numerous interested parties involved in Ruby's polygraph examination, there were present individuals representing the Commission and the Dallas district attorney, as well as two defense counsel, two FBI agents, the chief jailer, the psychiatrist, and the court reporter, although the assistant district attorney and one defense counsel left when Ruby was actually responding to questions while the instrument was activated. Ruby was placed in a position where there was a minimum of distraction for him during the test. He faced a wall and could not see anyone except possibly through secondary vision from the side. Agent Herndon expressed the opinion that Ruby was not affected by the presence of the people in the room.

Answers by Ruby to certain irrelevant control questions suggested an attempt to deceive on those questions. For example, Ruby answered "No" to the question "While in the service did you receive any disciplinary action?" His reaction suggested deception in his answer. Similarly, Ruby's negative answer to the query "Did you ever overcharge a customer" was suggestive of deception. Ruby further showed an emotional response to other control questions such as "Have you ever been known by another name" "Are you married?" "Have you ever served time in jail?" "Are your parents alive?" "Other than what you told me, did you ever hit anyone with any kind of a weapon?" Herndon concluded that the absence of any physiological response on the relevant questions indicated that there was no deception.

An accurate evaluation of Ruby's polygraph examination depends on whether he was psychotic. Since a psychotic is divorced from reality, the polygraph tracings could not be logically interpreted on such an individual. A psychotic person might believe a false answer was true so he would not register an emotional response characteristic of deception as a normal person would. If a person is so mentally disturbed that he does not understand the nature of the questions or the substance of his answers, then no validity can be attached to the polygraph examination. Herndon stated that if a person, on the other hand, was in touch with reality, then the polygraph examination could be interpreted like any other such test.

Based on his previous contacts with Ruby and from observing him during the entire polygraph proceeding, Dr. William R. Beavers testified as follows:

"In the greater proportion of the time that he answered the questions, I felt that he was aware of the questions and that he understood them, and that he was giving answers based on an appreciation of reality.[11]

Dr. Beavers further stated that he had previously diagnosed Ruby as a "psychotic depressive."

Based on the assumption that Ruby was a "psychotic depressive," Herndon testified:

"There would be no validity to the polygraph examination, and no significance should be placed upon the polygraph charts."

Considering other phases of Dr. Beavers' testimony, Herndon stated:

"Well, based on the hypothesis that Ruby was mentally competent and sound, the charts could be interpreted, and if those conditions are fact, the charts could be interpreted to indicate that there was no area of deception present with regard to his response to the relevant questions during the polygraph examination."

In stating his opinion that Ruby was in touch with reality and understood the questions and answers, Dr. Beavers excepted two questions where he concluded that Ruby's underlying delusional state took hold. Those questions related to the safety of Ruby's family and his defense counsel. While in the preliminary session Ruby had answered those questions by stating that he felt his family and defense counsel were in danger, he did not answer either question when the polygraph was activated. Dr. Beavers interpreted Ruby's failure to answer as a reflection of "internal struggle as to just what was reality." In addition, Dr. Beavers testified that the test was not injurious to Ruby's mental or physical condition.

Because Ruby not only volunteered but insisted upon taking a polygraph examination, the Commission agreed to the examination. FBI Director J. Edgar Hoover commented on the examination as follows:

"It should be pointed out that the polygraph, often referred to as "lie detector" is not in fact such a device. The instrument is designed to record under proper stimuli emotional responses in the form of physiological variations which may indicate and accompany deception. The FBI feels that the polygraph technique is not sufficiently precise to permit absolute judgements of deception or truth without qualifications. The polygraph technique has a number of limitations, one of which relates to the mental fitness and condition of the examinee to be tested.

"During the proceedings at Dallas, Texas, on July 18, 1964, Dr. William R. Beavers, a psychiatrist, testified that he would generally describe Jack Ruby as a "Psychotic depressive." In view of the serious question raised as to Ruby's mental condition, no significance should be placed on the polygraph examination and it should be considered nonconclusive as the charts cannot be relied upon."

Having granted Ruby's request for the examination, the Commission is publishing the transcript of the hearing at which the test was conducted and the transcript of the deposition of the FBI polygraph operator who administered the test. The Commission did not rely on the results of this examination in reaching the conclusions stated in this report.

Mr. SPECTER. Mr. President, I am not putting into the RECORD the more extensive examination of Mr. Ruby or the more extensive documents on the tracings themselves which have certain probative value, but I think that it does have some bearing on the issue and is an appropriate matter for consideration at this point.

I do support the bill overall, but I do believe that there are sufficient problems with the polygraph that it has to be used in a very, very careful manner.

I thank the Chair and I yield the floor.

The PRESIDING OFFICER (Mr. FORD). The Senator from Oklahoma.

Mr. NICKLES. Mr. President, I would like to point out a few things that are in this amendment and maybe clarify some of the statements that have been made, and I appreciate my friend, Senator KENNEDY, for some of his comments.

Again, I would like for him to listen and hopefully he would accept this amendment because I do not think that it is that much different from the bill that he and Senator HATCH have introduced.

The bill as proposed by Senator KENNEDY and Senator HATCH allows the use of preemployment polygraph. It does not prohibit it. It allows the public sector to use preemployment polygraph; in other words, before the Federal Government hires someone, whether it be the Department of Defense or the FBI, the Department of Energy, it is trying to guard an Army plant or something, and they are entitled to use the polygraph. They use the polygraph as an instrument to try and find out if persons are subject to or have a history of crime or a history of drug abuse or a history of terrorism. Maybe they are trying to infiltrate the CIA. They can use the polygraph to hopefully narrow down those persons who have that type of a background.

They have used it in the past. This bill allows them to continue using it. It does not prohibit the Government from using the polygraph in those instances.

operator, present to maintain custody of Jack Ruby while the examination was being administered. Assistant District Attorney Alexander requested a list of questions, a copy of the recording made by the polygraph machine and a copy of the report interpreting the test. In response to the numerous requests, the procedure was determined that the questions to be asked of Ruby would be discussed in a preliminary session in the presence of defense counsel, the assistant district attorney and Chief Jailer E.L. Holman, who was to replace Swett. The assistant district attorney would not be present when Ruby answered the questions, but Jailer Holman was allowed to remain to retain custody of Ruby. No commitment was made on behalf of the Commission as to what disclosure would be made of the results of the examination. Since Dr. Tanay was not in Dallas and therefore could not be present, arrangements were made to have in attendance Dr. William R. Beavers, a psychiatrist who had previously examined and evaluated Ruby's mental state.

At the conclusion of the lengthy preliminary proceedings, Ruby entered the jury conference room at 2:23 p.m. and was informed that the Commission was prepared to fulfill its commitment to offer him a polygraph examination, but was not requesting the test. On behalf of the Commission, Assistant Counsel Specter warned Ruby that anything he said could be used against him. Chief Defense Counsel Fowler advised Ruby of his objections to the examination. Ruby then stated that he wanted the polygraph examination conducted and that he wanted the results released to the public as promptly as possible. Special Agent Bell P. Herndon, polygraph operator of the FBI, obtained a written "consent to interview with polygraph" signed by Jack Ruby. Herndon then proceeded to administer the polygraph examination by breaking the questions up into series which were ordinarily nine questions in length and consisted of relevant interrogatories and control questions.

ADMINISTRATION OF THE TEST

During the course of the polygraph examination Jack Ruby answered the relevant questions as follows:

"Q. Did you know Oswald before November 22, 1963?

"A. No.

"Q. Did you assist Oswald in the assassination?

"A. No.

"Q. Are you now a member of the Communist Party?

"A. No.

"Q. Have you ever been a member of the Communist Party?

"A. No.

"Q. Are you now a member of any group that advocates the violent overthrow of the United States Government?

"A. No.

"Q. Have you ever been a member of any group that advocates violent overthrow of the United States Government?

"A. No.

"Q. Between the assassination and the shooting, did anybody you know tell you they knew Oswald?

"A. No.

"Q. Aside from anything you said to George Senator on Sunday morning, did you ever tell anyone else that you intended to shoot Oswald?

"A. No.

"Q. Did you shoot Oswald in order to silence him?

"A. No.

"Q. Did you first decide to shoot Oswald on Friday night?

"A. No.

"Q. Did you first decide to shoot Oswald on Saturday morning?

"A. No.

"Q. Did you first decide to shoot Oswald on Saturday night?

"A. No.

"Q. Did you first decide to shoot Oswald on Sunday morning?

"A. Yes.

"Q. Were you on the sidewalk at the time Lieutenant Pierce's car stopped on the ramp exit?

"A. Yes.

"Q. Did you enter the jail by walking through an alleyway?

"A. No.

"Q. Did you walk past the guard at the time Lieutenant Pierce's car was parked on the ramp exit?

"A. Yes.

"Q. Did you talk with any Dallas police officers on Sunday, November 24, prior to the shooting of Oswald?

"A. No.

"Q. Did you see the armored car before it entered the basement?

"A. No.

"Q. Did you enter the police department through a door at the rear of the east side of the jail?

"A. No.

"Q. After talking to Little Lynn did you hear any announcement that Oswald was about to be moved?

"A. No.

"Q. Before you left your apartment Sunday morning, did anyone tell you the armored car was on the way to the police department?

"A. No.

"Q. Did you get a Wall Street Journal at the Southwestern Drug Store during the week before the assassination?

"A. No.

"Q. Do you have any knowledge of a Wall Street Journal addressed to Mr. J.E. Bradshaw?

"A. No.

"Q. To your knowledge, did any of your friends or did you telephone the FBI in Dallas between 2 or 3 a.m. Sunday morning?

"A. No.

"Q. Did you or any of your friends to your knowledge telephone the sheriff's office between 2 or 3 a.m. Sunday morning?

"A. No.

"Q. Did you go to the Dallas police station at any time on Friday, November 22, 1963, before you went to the synagogue?

"A. No.

"Q. Did you go to the synagogue that Friday night?

"A. Yes.

"Q. Did you see Oswald in the Dallas jail on Friday night?

"A. Yes.

"Q. Did you have a gun with you when you went to the Friday midnight press conference at the jail?

"A. No.

"Q. Is everything you told the Warren Commission the entire truth?

"A. Yes.

"Q. Have you ever knowingly attended any meetings of the Communist Party or any other group that advocates violent overthrow of the Government?

"A. No.

"Q. Is any member of your immediate family or any close friend, a member of the Communist Party?

"A. No.

"Q. Is any menmber of your immediate family or any close friend a member of any group that advocates the violent overthrow of the Government?

"A. No.

"Q. Did any close friend or any member of your immediate family ever attend a meeting of the Communist Party?

"A. No.

"Q. Did any close friend or any member of your immediate family ever attend a meeting of any group that advocates the violent overthrow of the Government?

"A. No.

"Q. Did you ever meet Oswald at your post office box?

"A. No.

"Q. Did you use your post office mailbox to do any business with Mexico or Cuba?

"A. No.

Q. Did you do business with Castro-Cuba?

"A. No.

Q. Was your trip to Cuba solely for pleasure?

"A. Yes.

Q. Have you now told us the truth concerning why you carried $2,200 in cash on you?

"A. Yes.

Q. Did any foreign influence cause you to shoot Oswald?

"A. No.

Q. Did you shoot Oswald because of any influence of the underworld?

"A. No.

Q. Did you shoot Oswald because of a labor union influence?

"A. No.

Q. Did any long-distance telephone calls which you made before the assassination of the President have anything to do with the assassination?

"A. No.

Q. Did any of your long-distance telephone calls concern the shooting of Oswald?

"A. No.

Q. Did you shoot Oswald in order to save Mrs. Kennedy the ordeal of a trial?

"A. Yes.

Q. Did you know the Tippit that was killed?

"A. No.

Q. Did you tell the truth about relaying the message to Ray Brantley to get McWillie a few guns?

"A. Yes.

Q. Did you go to the assembly room on Friday night to get the telephone number of KLIF?

"A. Yes.

Q. Did you ever meet with Oswald and Officer Tippit at your club?

"A. No.

Q. Were you at the Parkland Hospital at any time on Friday?

"A. No.

Q. Did you say anything when you shot Oswald other than what you've testified about?

"A. No.

Q. Have members of your family been physically harmed because of what you did?

"A. No.

Q. Do you think members of your family are now in danger because of what you did?

"(No response.)

Q. Is Mr. Fowler in danger because he is defending you?

"(No response.)

"Q. Did "Blackie" Hanson speak to you just before you shot Oswald?"

"A. No."

INTERPRETATION OF THE TEST

A polygraph examination is designed to detect physiological responses to stimuli in a carefully controlled interrogation. Such responses may accompany and indicate deception. The polygraph instrument derives its name from the Greek derivative "poly" meaning many and the word "graph" meaning writings. The polygraph chart writings

Ruby's testimony was taken in the Dallas jail back on June 7, 1964, Mr. Ruby took over the proceedings, as he was wont to do. Before the commission could be called to order, Mr. Ruby stated—really blurted out—on that occasion: "Without a lie detector test on my testimony, my verbal statements to you, how do you know I'm telling the truth?"

In the course of the discussion which followed, Chief Justice Warren said: "I wouldn't suggest a lie detector test to test the truth. We will treat you the same as we do any other witness, and if you want such a test, I will arrange it for you."

That examination was a fascinating one, because after the commitment was made by Chief Justice Warren to administer the test, there were many second thoughts about it. Chief Justice Warren had great reservations about the reliability or validity or worthwhile nature of any such test. There were those in Jack Ruby's family who did not want the test to be administered.

Finally, the decision was made that Mr. Ruby would be offered the test if he wanted it, but he would have an opportunity to withdraw from the test.

On July 26, 1964, lacking any seniority on the Warren Commission staff, I was the assistant counsel who went to the Dallas jail, at which point a very extensive polygraph examination was administered to Jack Ruby. So far as the test itself discerned, the test indicator showed no deception when Jack Ruby answered that he was not involved with Lee Harvey Oswald and was not involved with any conspiracy to assassinate the President.

In the final analysis, the examination was not relied upon by the commission, substantially for the reasons pointed out by Director Hoover—that the FBI's judgment was that the polygraph examination lacked sufficient reliability, and that was especially in the context of Mr. Ruby's own mental status at that time.

Polygraphs can be extraordinarily embarrassing for those who choose to take them, given the questions about reliability.

We had a very celebrated voluntary polygraph examination in the city of Philadelphia in 1973, when the mayor of the city, Mayor Frank Rizzo, got into a controversy with former State Senator Pete Camiel, who was at that time chairman of the Democratic city committee.

The Philadelphia Daily News offered a polygraph exam to determine who was telling the truth under the circumstances. On that occasion, the polygraphs were administered to Mayor Rizzo and his administrative assistant, who was present for the conversation, Mr. Philip Carroll, as well as to a Mr. Camiel.

Mayor Rizzo, according to the test, failed, as did Philip Carroll, and Mr. Camiel, according to the test, passed, and it was a notorious situation with blazing headlines. There were a great many jokes about it, that jokingly said that was the only time that someone brought along a corroborating liar on a question of veracity, and it focused a great deal of attention at that time on the questionable nature of using a polygraph because of the problems which are inherent on the reliability of the polygraph.

But there are those who choose to use them, and in a free society, if there are appropriate limitations, a polygraph examination may be of some limited value, principally as an investigative technique, but the limits on its reliability have been established in quite a number of circumstances.

Mr. President, I ask unanimous consent that the record from the Warren Commission report, appendix XVII, be printed in the RECORD at this point.

There being no objection, the record was ordered to be printed in the RECORD, as follows:

APPENDIX XVII—POLYGRAPH EXAMINATION OF JACK RUBY

PRELIMINARY ARRANGEMENTS

As early as December of 1963, Jack Ruby expressed his desire to be examined with a polygraph, truth serum, or any other scientific device which would test his veracity. The attorneys who defended Ruby in the State criminal proceedings in Texas agreed that he should take a polygraph examination to test any conspiratorial connection between Ruby and Oswald. To obtain such a test, Ruby's defense counsel filed motions in court and also requested that the FBI administer such an examination to Ruby. During the course of a psychiatric examination on May 11, 1964, Ruby is quoted as saying: "I want to tell the truth. I want a polygraph * * *." In addition, numerous letters were written to the President's Commission on behalf of Ruby requesting a polygraph examination.

When Ruby testified before the Commission in Dallas County Jail on June 7, 1964, his first words were a request for a lie detector test. The Commission hearing commenced with the following exchanges:

"Mr. JACK RUBY. Without a lie detector test on my testimony, my verbal statements to you, how do you know if I am telling the truth?

"Mr. TONAHILL [Defense Counsel]. Don't worry about that, Jack.

"Mr. RUBY. Just a minute, gentlemen.

"Chief Justice WARREN. You wanted to ask something, did you, Mr. Ruby?

"Mr. RUBY. I would like to be able to get a lie detector test or truth serum of what motivated me to do what I did at that particular time, and it seems as you get further into something, even though you know what you did, it operates against you somehow, brain washes you, that you are weak in what you want to tell the truth about and what you want to say which is the truth.

"Now Mr. Warren, I don't know if you got any confidence in the lie detector test and the truth serum, and so on.

"Chief Justice WARREN. I can't tell you just now much confidence I have in it, because it depends so much on who is taking it, and so forth.

"But I will say this to you, that if you and your counsel want any kind of test, I will arrange it for you. I would be glad to do that, if you want it. I wouldn't suggest a lie detector test to testify the truth.

"We will treat you just the same as we do any other witness, but if you want such a test, I will arrange for it.

"Mr. RUBY. I do want it. Will you agree to that, Joe?

"Mr. TONAHILL. I sure do, Jack."

Throughout Ruby's testimony before the Commission he repeated his request on numerous occasions that he be given an opportunity to take a lie detector test.[7] Ruby's insistence on taking a polygraph examination is reflected right to the end of the proceedings where in the very last portion of the transcribed hearings Ruby states:

"Mr. RUBY. All I want to do is to tell the truth, and the ony way you can know it is by the polygraph, as that is the only way you can know it.

"Chief Justice WARREN. That we will do for you."

Following Ruby's insistence on a polygraph test, the Commission initiated arrangements to have the FBI conduct such an examination. A detailed set of questions was prepared for the polygraph examination, which was set for July 16, 1964. A few days before the scheduled test, the Commission was informed that Ruby's sister, Eva Grant, and his counsel, Joe H. Tonahill, opposed the polygraph on the ground that psychiatric examinations showed that his mental state was such that the test would be meaningless.

The Commission was advised that Sol Dann, a Detroit attorney representing the Ruby family, had informed the Dallas office of the FBI on July 15, 1964, that a polygraph examination would affect Ruby's health and would be of questionable value according to Dr. Emanuel Tanay, a Detroit psychiatrist. On that same date, Assistant Counsel Arlen Specter discussed by telephone the polygraph examination with Defense Counsel Joe H. Tonahill, who expressed his personal opinion that a polygraph examination should be administered to Ruby. By letter dated July 15, 1964, Dallas District Attorney Henry Wade requested that the polygraph examination cover the issue of premeditation as well as the defensive theories in the case.

Against this background, it was decided that a representative of the Commission would travel to Dallas to determine whether Jack Ruby wanted to take the polygraph test. Since Ruby had had frequent changes in attorneys and because he was presumed to be sane, the final decision on the examination was his, especially in view of his prior personal insistence on the test. In the jury conference room at the Dallas jail on July 18, Assistant Counsel Arlen Specter, representing the Commission, informed Chief Defense Counsel Clayton Fowler, co-Counsel Tonahill and Assistant District Attorney William F. Alexander that the Commission was not insisting on or even requesting that the test be taken, but was merely fulfilling its commitment to make the examination available. In the event Ruby had changed his mind and would so state for the record, that would conclude the issue as far as the Commission was concerned.

Chief Defense Counsel Fowler had objected to the test. He conferred with Jack Ruby in his cell and then returned stating that Ruby insisted on taking the examination. Mr. Fowler requested that (1) Dr. Tanay, the Detroit psychiatrist, be present; (2) the results of the test not be disclosed other than to the Commission; (3) the questions to be asked not be disclosed to the District Attorney's office; and (4) the results of the test be made available to defense counsel. Sheriff William Decker announced his intention to have Allan L. Sweatt, his chief criminal deputy who was also a polygraph

you are retrained very 2 years. There is no such requirement in the area of the private sector; no other requirements.

Some States have some, and we do not affect those or touch them.

Now the argument is made with regard to that. So that gives some idea about where we came out just with regards to the efficacy and efficiency of the polygraph.

What do we find in the use of polygraphs with regards to the States and interstate actions? I think that is a fair question. The States have the laws. If they are working, and solving the problem, that is fine. Is that the case? No. No. That does not happen to be the case.

We had the testimony before our committee last Congress. An example is when the Justice Department testified against the Hatch-Kennedy bill. The Justice Department stated their opposition to the bill would be considerably diminished if it could be shown that employers were not crossing State lines to avoid complying with polygraph bans in the States where they operate.

Here is the Attorney General of New York graphically testifying about the employment practice. This is what he said:

> We are surrounded by States which absolutely ban the lie detector, the polygraph, the so-called lie detector, from employing a person. National corporations seek to get out from under these kinds of prohibitions by either hiring someone initially in New York where there is no prohibition, that person goes through a polygraph screening, ships that person to another assignment to one of the other States, and might send someone in from one of the other States into New York.

We had the testimony from a Maryland applicant where requiring the test is prohibited, and anyone to be hired in the Virginia area can take the polygraph. We found constant examples of that, Madam President.

It is in fact what is happening, circumventing in a very significant and dramatic way in terms of the law.

Now, let me just go briefly to this current amendment in terms of the security guards. I would ask our colleagues, those who are in the room, to look to the rear of the Chamber. Here we have 12 States without a ban, and they are permitting polygraphs today. And there are 12 States with a ban dealing with bank fraud, embezzlement violations, theft, a whole range of activities.

Now, if you believe that the polygraph will work, if you believe that the polygraph States would be the black ones because they have about one-third of the number of violations of the law, that would be reasonable to assume if you think the polygraph works. On the contrary, even in the States without the ban it is about three times higher going to the years 1983, 1984, and 1985 indicating I believe that the States that provide it are giving the quickie tests. They say they pass the test. They leave them alone, do not even watch them anymore, and they get their hands in the till. And you have the violations.

Those areas that use the traditional investigative personnel requirements do the kind of work that should be done. They are able to seek out those individuals who may be somehow threatening in terms of employment.

Finally, Madam President, with regard to dealing with bank fraud and embezzlement, even if you believe in the polygraph, you give the polygraph to the drivers and the guards and the parking lot attendants, and the people who are stealing are the CEO's and the white collar workers. They do not get it. Depending on the length of the debate, I will put those studies in, too, about whether it is abusing children or stealing money. We could find out what the results and what the facts are.

Madam President, we will hear the arguments about terrorism. Every Member of this body is against terrorism. The question before us is, does the polygraph as a screening tool have any validity? I think the answer to that question is clear. We pointed that out.

Perhaps later in the debate we will have an opportunity to look at which States permit the polygraph and which States prohibit it and see which States have the fastest growth in crime. It is in the States that permit the polygraph. These happen to be the facts. We can get into them. Thankfully, we are back into the substance of this debate. We will get back into them, so we can at least knock down some of these false allegations and misrepresentations and charges which have absolutely no basis in fact, based on scientific information.

Madam President, the polygraph concept does not make sense in terms of the scientific evidence, in terms of deception, as these States demonstrate. It does not make any sense in terms of applying it in the areas of banks or nuclear agencies or whatever.

I think it is enormously important to have safety and security in those areas, and the wide range of investigative techniques available to law enforcement officers ought to be strengthened in those areas where public health and safety are involved, in terms of employment.

In the limited areas where you have reason to believe that there may be some instances, we provide this as part of a comprehensive range of investigatory tools to be utilized, as one of the many tools that can be utilized under controlled circumstances.

I hope this body is not going to be swayed by arguments raised here that if you give people tests by the polygraph, they will be fine. Shevchenko took a number of polygraph tests, given to him by the DOD, and he passed those with flying colors. We have an instance of an agent Chen who passed several polygraph tests. Once they passed those tests, they got right back into those secret files as fast as they could get down the corridor.

Madam President, I think we ought to understand what is legitimate, what is reasonable, what is going to provide security, and what is not going to provide security. I think we have a balanced program that permits the use under the circumstances I have described; that is a reasonable use. It has been one which has been satisfactory in terms of those who understand its importance, although limited, under circumstances involving a range of different criminal activities. It seems to me that we should not violate that basic concept.

I do not think this amendment is useful or helpful in terms of achieving what I understand are the legitimate interests of the Senator from Oklahoma, and I hope it will be defeated.

Mr. SPECTER. Madam President, I wish to compliment the members of the committee who have worked so hard to work out a compromise, and I intend to support the bill. The comments I make at this time do not go to the pending amendment, but I wish to make a brief statement on some of the concerns I have about polygraphs generally.

The experience with the polygraphs has been that they have some distinctive value as an investigative tool. When I was district attorney of Philadelphia, we used the polygraph as an investigative tool, but it has to be used in a very careful way.

The fact that it is generally inadmissible in judicial proceedings—and there have been a series of tests in many courts, generally, in which they were held to be inadmissible—speaks to the ultimate issue of the lack of reliability sufficient to provide evidence in a court of law.

The polygraph was evaluated in one very celebrated case on which I would like to comment briefly—the polygraph of Mr. Jack Ruby, which was taken in connection with the investigation into the assassination of President Kennedy.

Director J. Edgar Hoover had this to say about the polygraph exam administered to Mr. Ruby: "The FBI feels that the polygraph technique is not sufficiently precise to permit absolute judgments of deception or truth without qualifications."

The polygraph administered to Jack Ruby was one which I had occasion to be personally involved with as an assistant counsel to the Warren Commission. It arose under very unusual circumstances, and I believe it is worthy of reference, albeit briefly, in the debate and the discussion which we are undertaking today.

When the Warren Commission was convened, customarily, Chief Justice Earl Warren, who was chairman of the commission, would call the sessions to order. But on the occasion when Jack

lion polygraphs a year. It has doubled in the last 4 years, quadrupled in the last 8 years, and it is growing like wildfire. That is why we have to ask ourselves, is this really a problem today or is it not a problem today.

What I think we might do in this body is consider the best scientific evidence, and in this particular area of public policy we have been fortunate enough to have the OTA [Office of Technology Assessment] review the totality of various studies that have been done over the last 10 years, all of them, and they have reached various conclusions which those individuals who are concerned about this public policy question and the reliability of polygraphs I would hope, if we are going to be fortunate enough to pass this legislation today, might have a chance to review if they are very much concerned.

But in looking at the most conservative studies, for those who feel the greatest confidence in using polygraphs, not the average that are mistaken but if you take those that have the fewest mistakes, 12 percent—12 percent mistakes—over the number of 2 million Americans who are given polygraphs a year, you are talking about 260,000 honest and truthful Americans who are being labeled liars and deceptive, and that is on their record. It will go to the end of their lives. Those numbers are increasing every day. There are 120,000 deceptive liars that pass.

Oh, I have been listening to those on the floor crying crocodile tears about the dangers of child molesters. Let them take that polygraph, they pass it, and we stick them into that day care center and forget about them; they have passed it. Why, no one who is aware of the techniques and knowledge of thorough, comprehensive investigation, personnel examination, would be willing to rely upon that as the sole source of making a determination.

I hear out on the floor, "Well, if it is good enough for the Federal Government, why don't you provide the same standards then for the private sector? Will you accept that amendment?"

Interesting.

We approved just a few years ago DOD to do 3,800 comprehensive polygraphs. DOD stopped at 3,300. Why? Because they could not get sufficiently trained personnel to administer them. And we want to extend that to all over the private sector? You know what is happening, and that is you have ill-trained individuals that are administering those quickie wiretaps. We hear, "Why don't you apply the standards at the Federal level to the private level?" The average cost for the private is $15 to $25. The Federal is $800. You talk about business reservation and opposition to a bill. Just try and accept that as a concept. It is those who are basically opposed who are insensitive to the growth of these violations of individual rights and liberties.

Sam Ervin, the great conservative, understood that well. Sam Ervin understood it well when he said you will put the Constitution on its tail. When you take a polygraph you prove yourself innocent instead of proving yourself guilty. He made that statement in the first polygraph bill legislation, and it has been sidetracked for a period of years. Now we have worked it out, and crafted, I think, a sensible, responsible program that is supported by numerous trade organizations.

I mentioned them yesterday and I will mention them at the end of this discussion.

Mr. NICKLES. Will the Senator yield?

Mr. KENNEDY. Not just now. I have been waiting for this debate to get started. We finally started it. I am going to speak for another few minutes, and then I will be glad to talk specifically about the amendment, and debate as long as the Senator would like.

One of the other interesting points that is raised by the OTA is who passes it? Who fails it? If you are an altar boy, you probably will fail it. You would have a sense of conscience, and potential guilt. But who passes it? The psychopaths, the deceptive ones, and here it is, Mr. President.

The OTA study results indicate that subjects that are not detectable were significantly less socialized than those who were detectable.

Susceptibility to detection seems to be immediately indicated by socialization, and socialization results indicated the low socialization subjects—well, the highly social, EDR's, highly socialization subjects were more responsive to electric terminal. As a result, several of them were misclassified as deceptive. Guilty psychopaths may escape detection. That ought to be satisfying. Guilty psychopaths may escape detection because they are not concerned enough about misdeeds to create an interpretation of physiological responses.

Mr. HATCH. Will the Senator yield?

Mr. KENNEDY. If I can just finish now, please, I want to make my case.

Mr. HATCH. I am with the Senator.

Mr. KENNEDY. I know. But I want to finish my point.

Particularly psychotics were likely to be identified as deceptive. There were no guilty subjects in this real crime analog. OTA points out that if you are mean, scheming, lying, a child pedophile, you will pass this test. Just give them a test, they pass it, and put them in with the kids, put them in the wards, or put them anywhere you want to.

Mr. HATCH. Will the Senator yield?

Mr. KENNEDY. No. I will not yield.

Mr. HATCH. Will the Senator quit pointing to this side of the aisle when he talks about mean, scheming, lying people? [Laugther.]

Mr. KENNEDY. Further, in the OTA study, let me just go through a few of these points for those who have a great sense of reliability about this measure. Here it is in the section of the OTA study dealing with the physical countermeasures. Listen to this. These are various studies.

I will put the references in, I will put the studies in, they are all referenced on the back of the appendix of the OTA study.

They found that when subjects pressed their toes toward the floor, they are able to reduce the probability of detection 75 to 80 percent. Put your toes on the floor and you are reduced.

In two recent studies discussed in chapter 5, the efficacy of physical countermeasures were tested. Both studies found that the countermeasures allowed subjects to beat the polygraph. Well, before we get all excited about these terrorists and bank robbers, they know how to put their toes on the floor, or to deal with various countermeasures. If they want to get them in the bag, just give them a polygraph, someone says over here. They know how to deal with these countermeasures. If they do not, all they have to do is read this book, and they will find out.

A recent study the distinguished researcher from Utah also found that the use of physical countermeasures decreased detectability.

Then, Mr. President, I will make reference to one of the studies. Again it refers to the OTA.

After they did the study and evaluation where they found out about what was inconclusive, and this study was 12 percent incorrect, it pointed out that the study required the polygraphers to make decisions of guilt or innocence based upon visual observation of the test scores without using the polygraph—visual observations alone to produce these results.

Among the guilty subjects, 86 percent were correctly classified; among the innocent subjects, 48 percent were correctly classified.

The polygraph on the other hand produced the overall results of 10 percent inconclusive, 10 percent incorrect, 80 percent correct, thus correctly identifying the guilty subjects. The behavioral observations of the polygrapher were more accurate than the polygraph.

We have an unrealiable tool that has some importance and some significance when it is utilized with a wide variety of other investigative procedures.

I have not opposed that in terms of the Defense Intelligence Agency. They take between 4 and 8 hours to administer a polygraph. They are permitted to administer two polygraphs a day. These others that we heard about take 15 minutes, if you have that long. If you are going to do it for the defense industry, you have to have a 4-year college accreditation, you have to pass the DOD approval course of instruction, you are supervised for a period of 1 year, not less than 6 months, and

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Oklahoma [Mr. NICKLES] proposes an amendment No. 1608 to amendment No. 1607.

Mr. NICKLES. Madam President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

In the amendment, strike all after "(e)" the first time it appears and insert in lieu thereof the following:

EXEMPTION FOR SECURITY SERVICES.—

(1) IN GENERAL.—Subject to paragraph (3), this Act shall not prohibit the use of a lie detector test on prospective employees of a private employer whose primary business purpose consists of providing armored car personnel, personnel engaged in the design, installation, and maintenance of security alarm systems, or other uniformed or plainclothes security personnel and whose function includes protection of—

(A) facilities, materials, or operations having a significant impact on the health or safety of any State or political subdivision thereof, or the national security of the United States, as determined under rules and regulations issued by the Secretary within 60 days after the date of the enactment of this Act, including—

(i) facilities engaged in the production, transmission, or distribution of electric or nuclear power;

(ii) public water supply facilities;

(iii) shipments or storage of radioactive or other toxic waste materials; and

(iv) public transportation; or

(B) currency, negotiable securities, precious commodities or instruments, or proprietary information.

(2) COMPLIANCE.—The exemption provided under paragraph (1) shall not diminish an employer's obligation to comply with—

(A) applicable State and local law; and

(B) any negotiated, collective bargaining agreement,

that limits or prohibits the use of lie detector tests on such prospective employees.

(3) APPLICATION.—The exemption provided under this subsection shall not apply if—

(A) the results of an analysis of lie detector charts are used as the basis on which a prospective employee is denied employment without additional supporting evidence; or

(B) the test is administered to a prospective employee who is not or would not be employed to protect facilities, materials, operations, or assets referred to in paragraph (1).

On page 28, lines 17 and 18, strike out "limited exemption provided under section 7(d)" and insert in lieu thereof "exemptions provided under subsections (d) and (e) of section 7".

On page 33, lines 10 and 11, strike out "Such exemptions" and insert in lieu thereof "The exemptions provided under subsections (d) and (e) of section 7".

Mr. NICKLES. Madam President, may we have order?

The PRESIDING OFFICER. The Senate will be in order.

Mr. NICKLES. Madam President, this amendment has been called the armored car or security guard amendment. Basically, the amendment, as offered by my friends and colleagues, the Senator from Massachusetts [Mr. KENNEDY] and the Senator from Utah [Mr. HATCH], would allow preemployment polygraph of Government employees who are engaged in security operations, sensitive operations.

This would allow private employers of private security guards to use the polygraph for the same purposes, if those purposes are involved in the protection of "facilities, materials, and operations having a significant impact on the health or safety of any State or political subdivision thereof."

It would allow a private company, such as an armored car company, such as Brinks or Wells Fargo, to use preemployment use of the polygraph to try and make sure those individuals who are involved in dealing with a significant amount of money, securities, be entitled to use a polygraph. They are using it right now. I personally do not think that we should pass the bill, as presently drafted, which would prohibit the private use of the polygraph in these very sensitive industries, these industries that individuals are providing private security for.

It would allow these private security firms the use of the polygraph. It is not a complicated amendment.

I might mention to my colleagues, this is an amendment that has been adopted by the House of Representatives. It is one that I would hope that my colleagues would support and would accept.

I have heard various indications at different times that maybe it would be accepted and maybe it would not be accepted. I think it is a good amendment. It is one that I would hope we would adopt.

Mr. THURMOND addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. THURMOND. Madam President, I have a letter from Anderson Armored Car Services. It says:

There is polygraph legislation now pending in the United States Senate which vitally affects the security industry as defined by the House bill. We feel the security of our industry is at risk.

We would appreciate your supporting an exemption for armored car companies which would allow us to continue to use polygraphs for testing of employees.

I have another letter here from Wells Fargo Guard Services. It says:

As a company engaged in security work, I am very concerned about the impact of this legislation on my industry. S. 1904 would allow employers to liberally use the polygraph on employees whom they suspect have caused them economic harm. This harm does not even have to be reported to the police before the polygraph is used.

On the other hand, this legislation prohibits private companies from using preemployment polygraph screening, while allowing public agencies such as the police department and FBI to use the polygraph. Preemployment screening is vital when interviewing for the sensitive security positions within our firm. We are the target of not only criminals, but also terrorists who seek to infiltrate security companies.

In most cases, preemployment polygraphing is more important than postincident polygraphing in the security business, as the harm that can be done is of such a large magnitude. For example, the FBI recently arrested members of the Matcheteros terrorist gang and charged them with an $8 million armored car robbery in Connecticut, a state where polygraphs are outlawed. The terrorists planted a member of their group inside an armored car company as a driver. He fled to Cuba with the funds, which were then used to fuel terrorism in Puerto Rico.

Madam President, another excerpt from the letter:

We believe that polygraphs are best regulated at the state level. In fact, twenty-two states now have some sort of restrictions. However, if you believe the federal government should become involved, we would ask that you support an exemption for private security functions.

As I mentioned this morning, there are 44 States that now are regulating polygraphs. It seems to me that this certainly ought to be an exemption. Of course, I am opposed to the bill. At the same time, no one should really oppose this. I hope the Senate will adopt it.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Madam President, in just a moment or two, I will respond in particular detail to the amendment. I was not on the floor when there were other statements made about the legislation as a whole, and I would like to comment again about what we are doing and what we are not doing and why this legislation is necessary.

Madam President, earlier in the afternoon there were those who pointed out that this legislation did not apply to Federal, State, and local officials, and if the legislation made sense in terms of the private sector, why not the public sector. I think even those who made that argument are very familiar with what we have done in terms of polygraph in the particular areas of the DOD and the CIA.

State officials are protected by various provisions under the Constitution. There has to be the allegation that there is going to be some achievement of public good before there can be an infringement in terms of privacy. That does not apply in the private sector, Madam President. And I can hear the arguments now if we had to extend it about how the Federal Government is reaching out into those local communities and local governments.

And now we hear, "Well, why aren't you doing it there if it is so good in the area of the private?"

So, Madam President, it is important for us to, first of all, understand what have been the time-honored court decisions in terms of the protections that have been extended in terms of Federal employment in DOD and the CIA.

I will come back to that in just a moment or two, and also to make some realistic assessment about whether there really is a problem in this area.

We have seen instances where there have been incidental problems, but we did not find what we are finding in the private sector today—2 million, 2 mil-

ment of hear for banning polygraphs, that when we do not have anything else to do and the shelf is rather bare for business in the Senate, somebody may come up with the idea that we ought to ban drug testing as well.

I would be opposed to that. That does not mean that Senators might not want to bring that up and debate that. But I do not believe that we ought to do that today.

I believe that the Senate ought to go clearly on record, as it does, on one hand, saying it is going to ban polygraphs, that on the other hand it is going to say that you can in fact use drug tests and they are not going to be banned or regulated by this legislation.

Madam President, I send a modification to my amendment to the desk that will insert the words "Federal or" before the word "State".

The PRESIDING OFFICER. The Senator has a right to modify his amendment.

The amendment (No. 1606), as modified, is as follows:

EXEMPTION FOR PREEMPLOYMENT TESTS FOR USE OF CONTROLLED SUBSTANCES

(a) IN GENERAL.—An employer, subject to Section 7, may administer a scientifically valid test other than a lie detector test to a prospective employee to determine the extent to which the prospective employee has used a controlled substance listed in schedule I, II, III, or IV pursuant to section 202 of the Controlled Substances Act (21 U.S.C. 812).

(b) EXCEPTIONS.—

(1) ACCURACY AND CONFIDENTIALITY.—Paragraph (1) shall not supersede any provision of this Act or Federal or State law that prescribes standards for ensuring the accuracy of the testing process or the confidentiality of the test results.

(2) COLLECTIVE BARGAINING AGREEMENTS.—If prospective employees would be subject to a negotiated collective bargaining agreement, paragraph (1) shall apply only if testing is conducted in accordance with such agreement.

Mr. QUAYLE. That modification would make sure we are talking about State as well as Federal law.

So, Madam President, the issue is clear. I have conversed with representatives of the managers of this bill. I hope that it will be accepted. I believe a rollcall is important and at this time, Madam President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. KENNEDY. Madam President, I urge my colleagues to support this amendment. I intend to vote for it. If the Senator from Indiana wants to have a rollcall, I am prepared to urge people to vote for it. It is basically a restatement of current law. This bill does not cover drug testing. We pointed out in the report on page 47:

The Committee does not intend this broad definition of lie detectors to be misconstrued so as to include medical tests used to determine the presence or absence of controlled substances or alcohol in bodily fluids.

And so ours deals solely with the polygraph.

I have no objection to the amendment. As I stated, it is current law. If the Senator wants a rollcall, we can certainly have one. I hope that those who are supporting our bill will vote in favor of it.

I am prepared to move to a vote and hopefully then we will consider some amendments that are going to deal with the substance of the bill that we have now had before the Senate for about a day and a half.

The PRESIDING OFFICER. If there is no further debate, the question is on agreeing to the amendment. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Tennessee [Mr. GORE] and the Senator from Illinois [Mr. SIMON] are necessarily absent.

I also announce that the Senator from Delaware [Mr. BIDEN] is absent because of illness.

Mr. SIMPSON. I announce that the Senator from Kansas [Mr. DOLE] is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 96, nays 0, as follows:

[Rollcall Vote No. 35 Leg.]

YEAS—96

Adams	Glenn	Moynihan
Armstrong	Graham	Murkowski
Baucus	Gramm	Nickles
Bentsen	Grassley	Nunn
Bingaman	Harkin	Packwood
Bond	Hatch	Pell
Boren	Hatfield	Pressler
Boschwitz	Hecht	Proxmire
Bradley	Heflin	Pryor
Breaux	Heinz	Quayle
Bumpers	Helms	Reid
Burdick	Hollings	Riegle
Byrd	Humphrey	Rockefeller
Chafee	Inouye	Roth
Chiles	Johnston	Rudman
Cochran	Karnes	Sanford
Cohen	Kassebaum	Sarbanes
Conrad	Kasten	Sasser
Cranston	Kennedy	Shelby
D'Amato	Kerry	Simpson
Danforth	Lautenberg	Specter
Daschle	Leahy	Stafford
DeConcini	Levin	Stennis
Dixon	Lugar	Stevens
Dodd	Matsunaga	Symms
Domenici	McCain	Thurmond
Durenberger	McClure	Trible
Evans	McConnell	Wallop
Exon	Melcher	Warner
Ford	Metzenbaum	Weicker
Fowler	Mikulski	Wilson
Garn	Mitchell	Wirth

NAYS—0

NOT VOTING—4

Biden	Gore
Dole	Simon

So the amendment (No. 1606), as modified, was agreed to.

Mr. THURMOND addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

AMENDMENT NO. 1607

(Purpose: To provide a restricted exemption for security services)

Mr. THURMOND. Madam President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from South Carolina [Mr. THURMOND] proposes an amendment No. 1607.

Mr. THURMOND. Madam President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 28, between lines 14 and 15, insert the following new subsection:

(e) EXEMPTION FOR SECURITY SERVICES.—

(1) IN GENERAL.—Subject to paragraph (3), this Act shall not prohibit the use of a lie detector test on prospective employees of a private employer whose primary business purpose consists of providing armored car personnel, personnel engaged in the design, installation, and maintenance of security alarm systems, or other uniformed or plainclothes security personnel and whose function includes protection of—

(A) facilities, materials, or operations having a significant impact on the health or safety of any State or political subdivision thereof, or the national security of the United States, as determined under rules and regulations issued by the Secretary within 60 days after the date of the enactment of this Act, including—

(i) facilities engaged in the production, transmission, or distribution of electric or nuclear power;

(ii) public water supply facilities;

(iii) shipments or storage of radioactive or other toxic waste materials; and

(iv) public transportation; or

(B) currency, negotiable securities, precious commodities or instruments, or proprietary information.

(2) COMPLIANCE.—The exemption provided under paragraph (1) shall not diminish an employer's obligation to comply with—

(A) applicable State and local law; and

(B) any negotiated, collective bargaining agreement,

that limits or prohibits the use of lie detector tests on such prospective employees.

(3) APPLICATION.—The exemption provided under this subsection shall not apply if—

(A) the results of an analysis of lie detector charts are used as the basis on which a prospective employee is denied employment without additional supporting evidence; or

(B) the test is administered to a prospective employee who is not or would not be employed to protect facilities, materials, operations, or assets referred to in paragraph (1).

On page 28, lines 17 and 18, strike out "limited exemption provided under section 7(d)" and insert in lieu thereof "exemptions provided under subsections (d) and (e) of section 7".

AMENDMENT NO. 1608 TO AMENDMENT NO. 1607

(Purpose: To provide a restricted exemption for security services)

Mr. NICKLES. Madam President, I send a second-degree amendment to the desk and ask for its immediate consideration.

in preemployment screening. It says you cannot do it and places a ban on that. If we are going to get into what employers can in fact do in preemployment screening, we better make absolutely certain what we are not taking away from them, and I dare say that we will be going down the road, this will probably be just the beginning of things this Congress may want to prohibit or micromanage or to regulate.

But specifically today we are not going to prohibit an employer from using a drug test if in fact they want to.

I have been very, very careful, Mr. President, that I do not by this amendment want to intercede in two very important areas. One, we do not supersede any provision of this act or State law that prescribes standards for ensuring the accuracy of the testing process or confidentiality, and, further, nothing in this will affect any collective bargaining agreement that is in fact already reached.

But the important thing is that as we take away from one side with one hand, we want to make sure we are not taking away something else, and that is the possibility of drug testing.

Now, the second reason that this amendment is important is because we have heard decried on this floor and most recently by my dear friend from California the problem that we have with drugs—war against drugs. I concur in that, that we ought to have a war against drugs.

If in fact an employer wants to have a drug-free environment and he does not want his employees to be dependent upon drugs and he says "Look, I am not going to hire somebody," if they want to make that determination, "that is going to have this dependency on drugs," and he wants to use that information in hiring an individual. I want to make sure that this legislation does not prohibit him from doing that. He does not have to do it.

This does not get into mandatory or selective drug testing. It just says that if an employer wants to use this he or she in fact can do it.

There is no doubt about it, that we have a major problem of drugs in this country.

We have a Washington Post story just today.

"GAO cites cost of drug use in the U.S. Increased Availability, Potency Behind Epidemic, Report Says."

It says:

Cocaine and other illegal drugs are costing the nation tens of billions of dollars a year in lost wages, law enforcement expenses and treatment, according to a new congressional report. But no price tag exists for what are generally believed to be the enormous costs to society created by the family strife, suicide and violence that drugs produce, the report said.

Purer, cheaper and more easily attainable cocaine and heroin, as well as "designer drugs" produced in clandestine labs, have altered the shape of drug abuse in the 1980s, according to the study by the General Accounting Office, the investigative arm of Congress. Regarded as the entry-level to drug abuse, marijuana is still the most widely used illegal drug in the country, and although its use has declined since the 1970s, its potency has increased, the report said.

This is in today's paper, and you can thumb through other papers and periodicals, and you will find equally disturbing reports.

When we look at drug testing, there are many concerns that we have on drug testing, particularly when you look at drug testing of potential workers.

First, workers who abuse drugs have lower productivity;

Second, drug users have more health problems and hence generate higher employer insurance premiums;

Third, drug users have higher rates of absenteeism and on-the-job accidents;

Fourth, drug users may be responsible for lawsuits against the employer by employees or customers who are injured by drug abusers; and

Fifth, drug users may steal from their employer to support their drug habits or disclose confidential material in exchange for money or drugs.

So, yes, we have in fact decried the use of drugs. We have in fact decried and said that we are going to go on record that there is going to be a war against drugs.

And this amendment is very straightforward and it just simply says that an employer is not prohibited. An employer who could be subject to this bill may in fact use drug testing on preemployment screening.

The use of drugs in our society is in fact a national emergency and I believe that there is a compelling reason and need to act very promptly. We must not submerge the public interest or countless individuals and communities that will be exposed to these needless risks.

I just cite a couple statistics of loss of productivity to the use of drugs. Chemical abuse is costing American business as much as $100 million a year and is at least doubling accident rates. Health care costs go up and so does absenteeism. Substance abusers are absent from work 2½ times that of other workers, 2½ times.

Based on a study of the Research Triangle Institute [RTI] it concluded that drug abuse cost $33 billion in productivity losses. RTI estimated that in 1983 direct cost of drug abuse in our society was $60 billion or nearly 40 percent more than the $47 billion estimated for 1980.

Mr. President, illegal drugs have become so pervasive in the work place they are used in almost every industry, the daily companions of white and blue collar workers alike. Their presence on the job is devastating to the productivity, the health, and safety of the American work force even as competition of the foreign market and work force become more heated.

The costs of drug abuse on the job in fact are staggering. Accidents do occur. Thefts do occur. Bad decisions are made. And lives are ruined.

Federal experts estimate that between 10 and 23 percent of all U.S. workers use dangerous drugs on the job. Federal experts estimate that between 10 and 23 percent of all U.S. workers use dangerous drugs on the job.

Should not that be of national concern? I think it is. Shouldn't we use every means possible to try to declare our war on drugs, to try to encourage and have peer pressure, as the First Lady says, to just say, "No"?

In 1985, a study concluded by 800-COCAINE, a hot line for Cocaine Users Council, said 75 percent of those who called in said they took cocaine on the job, 69 percent said that they regularly used the drug while working, 25 percent said they used cocaine every day.

One former computer company worker today of being a cocaine pusher 3 years. He said, and this is from a cocaine pusher, "It was made to order. I had an instant clientele of hundreds of people who worked with me."

(At this point Ms. MIKULSKI assumed the chair.)

Mr. QUAYLE. Madam President, no part of our society is immune from the drug abuse that has beset the American society. A drug-free society would make a significant contribution to public safety, not just on highways or skyways but in the board rooms, on Wall Street, in our communities, small business as well as big business. That is why I believe that this amendment is important to allow that possibility if in fact you want to test for drug use.

This amendment contains three very important safeguards. It maintains important quality standards in verification standards to be used in processing drug tests, it does respect the collective bargaining agreements, and it does, in fact, maintain confidentiality of test results.

The drug test for Federal workers is well known to all of us. Executive Order 12-564, issued on September 15, 1987, directs agency heads to draw up programs to eliminate illegal drug use in Federal agencies.

On October 29, this Senate gave its approval to a measure requiring Federal drug and alcohol abuse tests for airline and transportation workers in S. 1485, the Airline Passenger Protection Act.

Madam President, I believe that the issue is known to all of us. We understand the problem of drugs. We understand that the intent of this bill is to ban polygraphs in certain instances. But, on the other hand, we are not interested and we want to make absolutely certain that we are not going to ban drug tests. Although I would imagine that perhaps someday, some Congress, because of questions of reliability, because of the issue of civil rights, because of many of the argu-

multitude of devices, or tools used to make decisions, that are inaccurate.

In fact, it may interest my colleagues to note the the American Psychological Association argued in an amicus brief before the Supreme Court that "subjective personnel assessment methods, such as interviews, experience requirements and performance appraisals, can and should be validated". The APA, a strenuous supporter of S. 1904 would have us do just that, set Federal standards for hiring and firing.

It would seem to me that employers use many tools to make employment decisions, none of which is perfect. Thus, I am somewhat surprised at the reasoning of the report of the majority which states:

Employees and applicants are being unjustly terminated or denied employment not due to their own shortcomings but due to the intentional and unintentional misuse of the polygraph exam and due to the inherent inaccuracies of the most common testing processes.

This statement implies that even the most common testing processes have inherent inaccuracies and leads me to believe that other tests will shortly be banned simply because they are imperfect. It is clear that the APA believes that the "interview and experience requirements" should be validated by "psychometric scrutiny" and require that employers "scientifically validate" all standards used in making employment decisions.

Further, the report states:

While the committee heard concerns raised about written psychological preemployment tests used by some employers, there have been few complaints about such tests, and little evidence of abuse.

First of all, I wonder what the APA would have to say about such tests. Are they valid? Can they really detect deceptions. Are citizens being denied employment opportunities based on such tests? If they are why aren't those tests included in this Federal ban on "lie detectors?"

I also find it odd in the extreme that "psychological preemployment tests" are found to be nonabusive or reliable simply because the sponsors have not heard complaints about those tests. I am certain they could find statements enough, if they looked.

COLLECTIVE BARGAINING AGREEMENTS COVER POLYGRAPH USE

Collective bargaining agreements are replete with clauses on these matters—including prohibitions and limitations on the use of the polygraph.

For example, the master freight agreement which the Teamsters have negotiated with trucking employers already permits the use of polygraphs in preemployment screening, but not after the employee is hired.

PUBLIC POLICY ARGUMENTS

It is bad public policy for the Federal Government to enter this new arena. The rationale given for this legislation is that employers make many unfair decisions based on the polygraph exam. I agree that the polygraph may lead to unfair decisions—but I do not agree that Federal law is the answer to all mistakes that are made.

If the polygraph is unfair, what about the presonality test, which are specifically sanctioned by the report of the sponsors? What about the personal reaction which probably governs most hiring decisions? What about paper and pencil honesty tests? What about evaluations by psychologists?

We will be closing our eyes to reality if we believe that Federal supervision of the hiring and firing process will improve their quality. The Federal Government makes mistakes just as often as the private sector.

FEDERAL LICENSING OF OCCUPATIONS

S. 1904 also crosses another new boundary—it requires Federal licensing of polygraphers. I hope I do not need to remind my colleagues that currently the States license occupations whether it be the license of a surgeon or a barber. Proponents of this legislation have argued that abuses by polygraphers are so egregious that an overriding Federal law is needed to ameliorate the shortcomings of State law.

The Washington Post recently ran a series of articles on physicians in the State of Maryland who had been convicted of criminal offenses, but who nevertheless had not had their license to practice medicine revoked. Does this clear abuse of the licensing system and risk of public safety mean that the Federal Government should establish licensing standards for physicians?

DOUBLE STANDARD

S. 1904 contains an interesting double standard in the use of polygraph. This bill is based on the conclusion that the polygraph is an unrealiable device for screening employees and therefore, it should be banned for use by employers in the vast majority of cases—except where screening is important.

Thus, certain Government contractors are exempted from the provisions of the bill. For them, the polygraph is reliable, but the very same device, in the hands of the same polygrapher, is unreliable for other employers with less important needs for screening. Consultants under contract to the Department of Defense, the National Security Agency, the Central Intelligence Agency or anyone who is "assigned to a space where * * * information is produced, processed, or stored" for NSA or the CIA, may polygraph when they wish and whomever they wish. Contractors for the FBI are exempted and may polygraph their employees at anytime during their career and for any reason.

Why is the polygraph reliable for them, but not for Department of Transportation contractors supplying airport antiterrorist and security services? Why is the polygraph device reliable for certain DOD contractors, but not for drug wholesalers and manufacturers?

In conclusion, S. 1904 represents a valiant effort to eradicate the abuses associated with the polygraph test in the workplace. Unfortunately, good intentions are not enough to accomplish this goal when coupled with a bill such as this. As I have pointed out, S. 1904 will merely compound the initial problem by further involving the Federal Government in area best left to the private domain or as the continued prerogative of the States.

AMENDMENT NO. 1606

(Purpose: To provide an exemption for preemployment tests for use of controlled substances)

Mr. QUAYLE. Mr. President, I think it is entirely appropriate now to move to an amendment I have. I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Indiana [Mr. QUAYLE] proposes an amendment numbered 1606:

At the end insert the following new section:

EXEMPTION FOR PREEMPLOYMENT TESTS FOR USE OF CONTROLLED SUBSTANCES

(a) IN GENERAL.—An employer, subject to Section 7, may administer a scientifically valid test other than a lie detector test to a prospective employee to determine the extent to which the prospective employee has used a controlled substance listed in schedule I, II, III, or IV pursuant to section 202 of the Controlled Substances Act (21 U.S.C. 812).

(b) EXCEPTIONS.—

(1) ACCURACY AND CONFIDENTIALITY.—Paragraph (1) shall not supersede any provision of this Act or State law that prescribes standards for ensuring the accuracy of the testing process or the confidentiality of the test results.

(2) COLLECTIVE BARGAINING AGREEMENTS.—If prospective employees would be subject to a negotiated collective bargaining agreement, paragraph (1) shall apply only if testing is conducted in accordance with such agreement.

Mr. QUAYLE. Mr. President, I have modified this amendment, after discussions with representatives of the managers of this bill, to make sure that we are not precluding a lie detector test. I do not want to get into lie detector testing. The language "scientifically valid" and "other than a lie detector test" is a modification of my original amendment.

Mr. President, my amendment is very direct and to the point. It deals with allowing and saying, if this law applies to an employer prohibiting a polygraph examination, that it would not prohibit an employer on a preemployment basis from using a drug test. And drug test means to look at prospective employment.

Mr. President, there are two very important fundamental reasons that I offer this amendment.

First, what this bill does is it prohibits employers from using a polygraph

where polygraphs are terribly unreliable.

If employers are banned from using this for preemployment screening, they will come up with something else. They are going to have a screening device. I cannot help it, although I suppose someone might try to come up with a law in the guise of doing something worthwhile to force employers to do things that are not done.

If the employer wants to rely on polygraphs that give faulty information, and I consider that not a terribly wise thing to do, I cannot preclude an employer from basing his hiring practices on something that may be called stupid. But that is no reason that we want to create this intrusion of the Federal law into an employment relationship.

But we do not have anything else to do. We go to the cupboard, and the cupboard is rather bare of things to do around here. So we will talk about polygraphs, lie detector tests. This is important.

I suppose you can make the argument that it will help out productivity, that it will lower interest rates, and that it will keep inflation down. It is not going to do anything in the area of strengthening national defense because this bill does not apply to national defense. DOD is exempt from this, as are other parts of the Federal Government.

Up to now, the Federal law has not been regulating employers' hiring and fire decisions, except to prohibit unlawful discrimination, and that is certainly a Federal responsibility.

There are certain inalienable rights, constitutional rights, issues like discrimination, that really demand the attention of the Senate. It is something that is of national importance.

Currently, we have labor-management agreements and State laws that, in fact, regulate hiring-firing decisions. Forty-four of the fifty States have laws governing the use of polygraphs. The Senator from South Carolina has pointed that out. Forty-four of the fifty States have laws governing the use of polygraphs in the workplace, and 33 of the 50 States have addressed this issue legislatively since 1980. Twenty-six States either ban or restrict the use of lie detector tests.

Being logical—and I suppose in Washington and in the Congress that is a bit much to ask—if you, in fact, were logical and if, in fact, you do not think lie detector tests are valid and if, in fact, you do not think lie detector tests ought to be used and you are suspicious of them, you ought to put up legislation and just ban lie detector tests. If they are no good, just ban them, pure and simple. But that is not what we have before us. We are just going to ban them for preemployment screening. We will use them elsewhere under certain conditions, and certainly much of the public sector will be able to use them.

But the States have, in fact, gotten into this a lot more than the Federal Government. They know what they are doing. But we do not have anything else to do, so we will talk about lie detector tests. We will invoke cloture, and we will spend the Senate's time talking about this.

In addition, the States have passed volumes of laws regulating the employment process, both through specific enactments against particular abuses and through statute and case law, requirements of just cause for discharge.

For example, in Massachusetts, New Hampshire, and Rhode Island, they increased the minimum wage above the current Federal minimum of $3.35 an hour. The District of Columbia raised the minimum hourly wage of beauty culture occupations from $3.75 per hour to $4.50. Kentucky and West Virginia raised their minimum wages to $3.35 per hour. Child labor laws were recently revised in 10 States. Florida imposed limits on permissible daily and weekly hours of work for 16- and 17-year-olds during the school year. Minnesota reduced the latest that minors, under the age of 16, may work. Connecticut no longer requires proof of age certificates for persons over the age of 18 employed in hazardous occupations.

The Labor Commissioner of Iowa was given authority to adopt rules on employment of minors. Several States require background checks of prospective child-care operators or workers. Tennessee requested a study of the need for minimum health and safety standards for the operation of video display terminals. The list goes on and on.

The States are actively involved in areas of concern to the employees. Twenty-six States have either banned or restricted the use of lie detector tests. But S. 1904 is the equivalent of a Federal ban on polygraph testing and sets up Federal standards for polygraph testing and licensing of polygraphers.

In passing this bill, we will be headed down the road of Federal standards of just cause for discharge. We will find ourselves not looking at broad policy issues, but obsessed with minutia of day-to-day hiring and firing decisions now subject to State law.

S. 1904 would set Federal standards for use of the polygraph device by employers.

A NEW AREA FOR FEDERAL LAW

I am opposed to this bill, not because I have any belief in the validity of the polygraph, but because it would create a new intrusion of Federal law into the employment relationship.

Up to now, Federal law has not regulated the employer's hiring and firing decision, except to prohibit unlawful discrimination.

TWENTY-SIX STATES PROHIBIT OR RESTRICT THE POLYGRAPH

Currently, labor-management agreements and State laws regulate hiring and firing decisions.

Forty-four of the 50 States have laws governing the use of polygraphs in the workplace and 33 of the 50 States have addressed this issue legislatively since 1980. Twenty-six States either ban or restrict use of "lie detectors."

In addition, the States have passed volumes of laws regulating the employment process, both through specific enactments against particular abuses and through statute and case law requirements of "just cause" for discharge.

For example, in Massachusetts, New Hampshire and Rhode Island increased the minimum wage above the current Federal minimum wage of $3.35 per hour. The District of Columbia raised the minimum hourly wage of "beauty culture occupations" from $3.75 per hour to $4.50. Kentucky and West Virginia raised their minimum wages to $3.35 per hour.

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The list goes on and on.

HEADING DOWN THE ROAD TOWARD "JUST CAUSE" FOR DISCHARGE

S. 1904 is the equivalent of a Federal bank on polygraph testing and sets up Federal standards for polygraph testing and licensing of polygraphers.

In passing this bill, we will be headed down the road of Federal standards of "just cause" for discharge. We will find ourselves, not looking at broad policy issues, but obsessed with the minutia of day-to-day hiring and firing decisions now subject to State law. This is the precedent set by this bill—that it appropriate for the Federal Government to ban the polygraph.

Next we will hear that it is appropriate for the Federal Government to ban drug testing. Indeed, it might be argued that this bill begins to do that very thing.

The polygraph is being banned because it is an inaccuarate device and because, even when it is accurate, unscrupulous polygraphers harass their subjects. The polygraph is but one of a

percent accuracy, when you have the best examiner, with the best questions, with the best amount of time spent; certainly not 15 minutes or one-half hour, perhaps even an hour under certain circumstances, and with the best analysis, you are going to be accurate 85 percent of the time.

The actual testimony I think will be that they are accurate about 50 percent of the time.

I think in most cases the Federal Government does not use the polygraph as the sole means of excluding somebody from a job. Under this bill we will not allow it to be used in any way to exclude a person from a job, as a job applicant. But we do allow it postjob attainment. We allow it as long as there is a reasonable suspicion that that person did something wrong, that they might be required to have a polygraph. And if they take the polygraph examination and the examination clears them as a general rule they are going to be all right. If they take it and the polygraph says they were deceptive or that they were untruthful, then the employer can act responsibly. If they refuse to take it the employer can treat it as though they had a negative polygraph examination.

Mr. GRAMM. Would the distinguished Senator yield?

Mr. HATCH. Yes.

Mr. GRAMM. Would the Senator support an amendment that simply says the private sector, in using polygraphs, would have to meet the Federal standard? If the distinguished Senator is concerned about someone losing a job if they fail the test, maybe the solution is not to deny the ability to use the test, but to simply say: You have got to follow the same procedures as the Federal Government does. You have got to recognize they are not always accurate. You have got to go beyond the polygraph test and verify the fact. But it can alert you to it just as doing an FBI check on a child day care center, if that process can be improved by polygraph but people cannot be denied a job because they fail it—the plain truth is you have got a resource constraint in checking people out.

If you went ahead and cleared the people that passed the polygraph and then focused your attention on those who did not, could we not do a better job of protecting children? Would you be inclined to that kind of amendment?

Mr. HATCH. The answer to that is no because when we have checked——

Mr. GRAMM. I figured.

Mr. HATCH [continuing]. Through the committee process a couple of years ago the answer from the private sector was we do not want to have that imposed upon us because we cannot afford it.

What the distinguished Senator is saying, if they want to do it they ought to be able to afford it. The answer to that is no. Because polygraphs, as accurate as they may be with the best of examiners, using the best tools, using the best questions, using adequate time, and using the best analysis, at best they are going to be accurate probably 85 percent of the time. That is if we give them every benefit of the doubt; and maybe only accurate 50 percent.

Put yourselves in the shoes of those applicants for employment. How many people in this country would like to submit themselves for 15 minutes, or 20 minutes, or 30 minutes of polygraph examination? Then I think you see the wisdom of this bill. This bill says, no, you are not going to be able to do that and exclude people from employment. That is wrong.

I do not think anybody has any better credentials fighting unwise labor legislation on this floor than I do. I am not bragging. It is just that I have had to do it all these years. It is no fun, especially arguing against my brothers in the labor unions that I came through. I am one of the few this whole doggone body who did, I might add, in the whole Congress, who went through an apprenticeship program and literally became a journeyman; and I am proud of it.

I have fought every bit of unwise labor legislation that came through here, but I always said to my brothers that when they are right, I will fight for them. I think it is incredible to argue that every business that should use polygraphs or could be required to use them, will not if they have to meet standards that are decent.

The fact of the matter is they would not pay the money to do it. They are using them, but they are intimidating people and they use the polygraph as an intimadation device, and it is not right.

This bill is wise because, once they are hired, if there is reasonable suspicion that they are doing something wrong, then the employer can ask them to submit to a polygraph. If they do not submit, that is their problem. The employer can act accordingly. If they do submit and they fail, then by gosh the employer has a right to fire them. If they do submit and pass, they are probably going to be cleared, under most circumstances.

The tool is still available but is is available under the best of circumstances, not under the intimidation circumstances that have been used so much in the past. And that is what this bill does.

It is a doggoned fine bill. It makes a lot of sense and frankly it protects people's rights and I think they ought to be protected and in this case the unions happen to be right and I support them.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. QUAYLE. Mr. President, let me first of all just amplify on the two points that have been brought up by my distinguished friends from South Carolina and Texas, Senator THURMOND and Senator GRAMM, on the objections to this bill.

The first, as Senator THURMOND has pointed out in graphic detail, you have States that already regulate this. Second, particularly as Senator GRAMM has pointed out, you have got a double standard on this bill. You do have a double standard on this bill in the fact that it is banned for the private sector but is OK for the public sector to do.

That type of hypocrisy is not unusual, but I think it ought to be pointed out, that what we say for the Federal Government is OK to do, we are not going to allow this to be done in the private sector.

The question is what forces this kind of logic? And I think what probably forces this kind of logic is that this Congress likes to legislate, likes to do things that help the folks out back home. We call it by any other name. We do not want to say that this is, in fact, a usurpation of State responsibility; 44 States regulate polygraphs. We do not want to get in and say that this is an unusual intrusion of what has been left to an employer-employee relationship. We would rather pass it off in terms of nice sounding, politically acceptable terminology that is civil rights, that this is certainly rights that folks ought to have.

You have those. We are going to make sure those rights are for at least the private sector, in this particular case, but not the public sector.

What I imagine really drives this bill is that there is nothing else for the Senate to do.

We spent 2 weeks on campaign reform, on a bill that we knew was not going anywhere. We were in session close to 60 hours, and we went to the unusual procedure of arresting Senators, which I thought was very heavy-handed.

We spent 2 weeks on that, and now we have spent yesterday, and we will spend today and part of tomorrow on an issue of major importance. That is on whether an employer can, in fact, use polygraphs for preemployment screening in the private sector.

We are going to say that that is not a good idea. We really have before the Senate a bill of major importance, major consequence, and it is of utmost national urgency that we focus on this bill. It is so important that we have even filed cloture on this bill to make sure that we will get a cloture vote tomorrow and that we can get this bill of major national importance passed. At least that is certainly the desire.

I really do not believe that this bill is of such importance. As a matter of fact, I do believe this is a practice that has traditionally been left to the States.

I am opposed to this bill, not because I have any belief in the polygraph but because, quite frankly, I believe, in some instances, it has been reported

sensitive areas where people are going to be hurt if we make a mistake, I, frankly, do not understand the obsession embodied in this legislation.

What about the children who could be protected if we used polygraphs and asked people, "Have you ever been arrested for child molesting?" Where does this bill protect their rights?

I think it is easy to talk in glib terms about 15 minute quickie lie detector tests, but I think there is ample ability to go beyond the test.

As the distinguished Senator from South Carolina was saying, the availability of the lie detector test keeps terrorists from applying to go to work for armored car companies or nuclear plants. Quite frankly, I want people who are going to be working in security at nuclear powerplants or at drug manufacturing facilities to be concerned about the fact that they might be chosen at random sample to do a polygraph test on whether they are smuggling drugs that may destroy the life and health and happiness of our children; or whether they may be engaged in something similar that is clearly against the public interest.

Thirty-three States already have licenses and certificates. Forty-four States have regulatory legislation. Thirty-three States have acted in the last decade. How did this become a Federal issue? How is it a Federal issue that day care center uses a polygraph to avoid hiring a child molester.

The plain truth is it is not the Federal Government's jurisdiction. This is one more step toward federalizing fundamental decisions in the private sector of the economy, decisions that have been left to city, county and State governments which, miraculously, have done pretty well working within their own individual constraints.

This is a Federal preemption. It is moving in the wrong direction and I hope my colleagues will understand before we all rush down here and vote for cloture and say, "Well, you know, we are a little bit suspicious about this. Maybe we ought to have some regulation of it." We already have regulation. We have regulation in the States.

There is not a good argument for this bill that I have heard anywhere. The only argument is the old argument that these tests are not totally reliable. I have never talked to any company, never talked to any insurance firm, any security firm that did not realize they were less than totally reliable. In fact, in many cases, just the threat of the test is what is required to preserve honest operation.

So I ask my colleagues to think about the safety of children in daycare centers, to think about the safety of nuclear reactors, to think about the safety of people who are riding in trains, people who are riding in airplanes.

This is not just an issue of 150 or 200 trade associations who are going to have their costs go up. We are not just talking about another deadweight burden of cost and inefficiency that robs the working men and women of America. We are not just talking about that. We are talking about people's health, people's safety, and about their lives.

I think this is a serious matter, and I think it ought to be thoroughly debated. I hope that by the time we are finished, the President will veto this unwise bill and that we will sustain that veto.

I yield the floor.

(Mr. SHELBY assumed the chair.)

Mr. HATCH. Mr. President, I think some of the allegations have to be answered. I respect my colleague from Texas. He is a great free enterpriser. He is one of the people who stand up on so many issues and I think he is one of the most articulate and intelligent Members who comes to this floor and who has ever spoken on this floor. But I have to correct him to a degree.

First of all, we would not require private businesses to do what the Federal Government does, because private businesses are not going to impose polygraphs on everybody. The airlines are not going to do it, and neither are day care centers, and neither are convenience stores and neither, really, will anybody else require polygraphs for every circumstance.

The fact of the matter is, under present law, 35 States require in all day care center situations that an FBI check, a thorough FBI check, be made, plus a criminal records check before they can hire these people.

I think what my colleague from Texas really does not realize is that drug users can be handled right now by any private business person by requiring a drug test. Under current law, they can do it. I believe the distinguished Senator from Indiana is going to offer an amendment in just a few minutes that will allow drug testing. And if the amendment is in the form I think it will be in, I am hopeful that we can accept that amendment. Now, that is current law, but he will lock it in, and he will do this whole country a favor in doing so. I canot imagine anybody on this floor voting against that.

So the argument that you have to have a lie detector test, which is, at best, only 85 percent accurate on the average, which means that 15 percent of the people are getting just hammered for no good reason, that argument is not a good argument, because they can test everybody who comes through if they want to for drugs.

But, as a practical matter, unlike the Federal Government, they are not going to require everybody to take a drug test because it costs money and private sector businesses are not going to do it. But, in day care, they are going to have FBI checks, for the most part, and criminal record checks for the most part, at least 35 States require it. I wish the other 15 would require that, too. I think that would be a good step forward. If we have the slightest indication somebody might be a drug user, put them through a drug test. They can do it under current law. But when the distinguished Senator from Indiana gets through—and I have fought for his amendment—when he gets through, it seems to me they will have an absolute right to do it, even though I think that is current law anyway.

So, to stand here and argue that you have got to have a polygraph, which nobody in this world wants to take, especially when you know it is not 100 percent accurate, when you know you might be one of those 15 percent who is mistreated, I think is a poor argument.

I know that the distinguished Senator from Texas is not going to vote for anything that would allow the private sector to do what the Federal Government sector does, require polygraphs under certain circumstances.

This bill does not do away with polygraphs. We still recognize some efficacy. I do not think anybody has better conservative credentials than I do or better law and order credentials than I do, but I am tired of anybody thinking that the polygraph is the last answer to anything. It just plain is not.

For the most part, it is unacceptable in courts of law for evidentiary purposes, and with good cause. Because it is not accurate.

I can tell you this, one of the things this bill is going to establish is that you are never going to be able to use the polygraph in the private sector as the sole determining influence to determine whether a person is hired or fired. The fact of the matter is that I do not think it should be the sole reason why anybody is fired. It certainly should not be the sole reason why anybody is not hired. The reason is because it is inaccurate.

As accurate as it may be when you have the best of examiners asking the best phrased questions, giving sufficient time to do the polygraph checking and given the best of analysis at the end, after you look at what the polygraph says you are still going to be inaccurate about 15 percent of the time.

What American wants to have to appear for an imposed polygraph examination?

Mr. GRAMM. Would the distinguished Senator yield on that point?

Mr. HATCH. I would be happy to.

Mr. GRAMM. Why are you doing that in the Federal Government then? Is polygraph not inaccurate when used by the Federal Government?

Mr. HATCH. It can be, but it is not used solely as a determinant whether they are employed or not. It may be a tool, but it is not the sole determination as far as I understand.

I might add that I have been a little more fair with polygraphs than they deserve. The fact is the top testimony in front of our committee said that 85

been here have been so unwise, so counterproductive, and so expensive to the functioning of the private sector of the economy.

I am struck, Mr. President, by a paradox here which is almost beyond imagination. The underlying logic of this bill is that polygraphs are fundamentally wrong, that their reliability is so low that we are in essence abridging people's rights by asking them to submit to examination, yet, the bill begins by exempting government.

I submit to my colleagues if you look at our great Nation and what makes it work, the logic is flawed. This bill regards the polygraph as a bad tool, yet it also holds that government is so critical to the Nation that we have to apply the polygraph in government, but that the private sector is so irrelevant to the Nation that because we have an imperfect tool in the polygraph, it, for all practical purposes, should not be used in the private sector of the economy except under the most limited nonproductive circumstances which one can imagine.

I submit, Mr. President, that the Government is made up of people who are riding in the wagon of this Nation and that the private sector is involved in pulling that wagon.

If we are talking about critically important elements of America, the private sector of the economy is certainly more important to the prosperity of our great Nation than is government. But if polygraphs are so counterproductive, so inefficient, so unreliable, so unfair, why are we using them in government when we are going to deny them to the private sector of the economy?

What a great paradox it is, Mr. President, that since 1985, over and over and over again the Congress has turned to greater reliance on the polygraph.

Now, when we are in the process as the House of Representatives has on three occasions employed the use of various types of testing and use of polygraph, what logic is there in saying to a day care center you are barred by law from using a polygraph to ask a prospective child care worker if they have ever been convicted of child molesting? It seems to me that what we have here is a totally illogical bill that embraces a faulty presumption. It clearly makes no sense.

What we are doing here is setting two standards, a perfect example of how Congress fails to serve the public interest.

One standard is the Government standard and in the Government we say, "use the polygraph." And yet we say to the private sector, whether you are talking about child day care, driving an armored car, guarding a nuclear powerplant, we say, no, this test is so unreliable that it may not be used.

Will it do us much good if someone breaks in and blows up a nuclear powerplant to go back and say, "Aha, you have complied with the special section of this bill that says now employees may be asked if they are willing to submit to a polygraph test to determine if an employee had a role in attacking the plant. They can still refuse, but you can use that as evidence in dismissing them."

Fat lot of good that is going to do when the nuclear powerplant is blown up.

Finally, as you look at the agencies listed here as being exempt, one has to ask who drew up their list?

If you are a private contractor doing specific work for the Department of Defense, Energy, the Central Intelligence Agency, the National Security Administration, the Federal Bureau of Investigation, where you are dealing with sensitive information, you can then be asked to use a polygraph under the Government exemption from the provisions of this bill.

What about the Arms Control and Disarmament Agency? I mean, surely we want some ability to determine, when we are negotiating arms control matters with the Soviet Union, that we have some degree of protection in terms of security. If we can give some lieutenant in the Defense Department a polygraph, why not the Arms Control and Disarmament Agency? What about the dozens of other agencies of Government that are dealing with highly classified material?

Are we concerned only about intelligence and counter-intelligence matters? Or are we concerned about security itself?

Mr. HATCH. Mr. President, will the Senator yield?

Mr. GRAMM. I will yield in just a minute.

Mr. HATCH. On just those points, because I understand how the Senator feels about this bill, and it is a controversial bill. But in those areas where they are exempt from this bill's provisions we exempt State and Federal Government agencies. The Senator recognized that at the beginning of his statement, and I just want to correct that now from that standpoint.

Mr. GRAMM. If there was a confusion in my statement, I would say that a central point is you are exempting the least important part of American society. You are exempting all the people who are riding in the wagon, but you are not exempting the people who are doing the work and are pulling the wagon in this country. That inequity is a major problem with this bill.

If polygraphs are so bad, why is the Government using them?

Mr. HATCH. There are two reasons, if the Senator will yield to me. One is we do not want to impose upon State governments the will of the Federal Government. That is one of the things I tried to put in this.

No. 2. is that we find that the Government does operate the polygraph better than the 15-minute quickie polygraphs that have been used to exclude people in preemployment hiring situations.

No. 3, we provide in this bill that you cannot use it for screening for plant preemployment because it is prejudicial and frankly the polygraphs are not all that accurate. Even the top authorities who testified before our committee said an 85 percent accuracy rate with all things going for it, everything done properly, would probably be a reasonable rate.

We just do not want to have people lose their jobs because of that.

Last and not least, the Government itself in administering polygraphs has been an expert. They generally very seldom rely purely on the polygraph itself. In fact, I have never heard of a case where they fired someone purely on results of a polygraph examination. There have to be some other reasons.

I think they have shown that proficiency in these national security areas to do that.

What we really wanted to do there was just plain recognize we are not going to tell State governments what to do.

The Federal Government we have exempted because there are so many people concerned about national security matters.

There are arguments on both sides of these.

What we tried to do is come up with a bill here that really does protect people's rights.

Mr. GRAMM. If I may reclaim the time, I do not remember having mentioned State or local government. I am talking solely about the Federal Government. I am saying if these tests are so flawed and inefficient, why are we letting government use them when we are not letting the private sector.

The Senator is talking about 15-minute quickie lie detector tests. If a child care center wants to administer a test and ask, "Have you ever been arrested for child molesting," I do not see that as a terrible thing.

Now I am certainly willing through due process to mandate that a test which was errant be eliminated from consideration in preventing them from being hired, but I am not opposed to them being asked.

If you are talking about a person who, through his job is responsible for safeguarding the lives of others, I am not going to apologize for saying yes, you can ask the person in a 15-minute test, "Did you use cocaine?" If the person denies drug use, but the test indicates otherwise, then I think it is reasonable to check further.

I just do not think this bill makes any practical sense. I am shocked and dumbfounded that it has the support it does. I am not in favor of having everybody submit to lie detector tests. But when we are talking about the private sector of the economy, when we are talking about people operating transportation systems, caring for our children, when we are talking about

employers. S. 1904 is expected to move quickly to the Senate floor.

This legislation prohibits private companies, including companies engaged in security work, from using pre-employment polygraph screening, while allowing public agencies such as the police department and FBI to use the polygraph. Pre-employment screening is vital when interviewing for the sensitive security positions within our firm. We are the target of not only criminals, but also terrorists who seek to infiltrate security companies.

I am a manager of an armored car service company and we handle large sums of currency and coin daily. Our employees are in custody of this currency and coin much of the time without any supervision. It is of vital importance to our operation that we be able to screen out dishonest employees before they have an opportunity to steal from us. The polygraph is our most important tool for this purpose, and prohibiting its use for pre-employment screening would have a very immediate impact on our business and increase the costs of our service substantially.

In most cases, pre-employment polygraphing is more important than post-incident polygraphing in the security business, as the harm that can be done is of such a large magnitude. For example, the FBI recently arrested members of the 'Los Matcheteros' terrorist gang and charged them with an $8 million armored car robbery in Connecticut, a state where polygraphs are outlawed. The terrorists planted a member of their group inside an armored car company as a driver. He fled to Cuba with the funds, which were then used to fuel terrorism in Puerto Rico.

All of the above is also supported in the book titled "Los Macheteros" by Ronald Fernandez, published in English by Printice Hall, copyright 1987. (The Wells Fargo robbery and the violent struggle for Puerto Rican Independence.)

The House of Representatives recognized the special needs of security companies and included in the Bill which just passed the House, an exemption for these functions. An identical exemption was included in the Bill which the House passed in 1986.

Frankly, we believe that polygraphs are best regulated at the state level. In fact, 22 states now have some sort of restrictions. However, if you believe the federal government should become involved, we would ask that you support an exemption for private security functions.

Sincerely,

NOBUMASA TSUBOI,
Branch Manager.

PROFESSIONAL LAWN CARE,
ASSOCIATION OF AMERICA,
Marietta, GA, January 28, 1988.

Senator EDWARD M. KENNEDY,
Senate Russell Office Building,
Washington, DC.

DEAR SENATOR KENNEDY: The Professional Lawn Care Association of America is writing to you to register our opposition to your Bill 1904, which will prevent our members from utilizing lie detector tests as one of several tools available to them in making hiring decisions.

PLCAA represents over 1,300 lawn care companies throughout the U.S., employing many thousands of people. Lawn care personnel have direct contact with a company's customers, and very often have a need to enter a customer's home. Our members are very conscious of hiring not only qualified people, but also employees who pose no risk to the customer or their property. Lie detector tests are one important tool used by some PLCAA members to help them in making a hiring decision.

PLCAA requests the opportunity to present our arguments against Bill 1904 to the Labor and Human Resources Committee. Your consideration of this request will be most appreciated.

Very truly yours,

JAMES F. WILKINSON, Ph.D.,
Director of Regulatory and Environmental Affairs.

NATIONAL PEST CONTROL ASSOCIATION INC.,
Dunn Loring, VA, February 11, 1988.

DEAR SENATOR: On February 3, the Labor and Human Resources Committee voted to report S. 1904, legislation which would severely restrict the responsible use of polygraph examinations by private employers. As currently drafted, this legislation would hurt our ability to protect the safety and security of our customers.

The pest control industry sends 57,000 employees directly into 10 million homes nationwide. When the homeowner allows an unfamiliar person to enter the household, the security of life and personal property is squarely on the line.

When used with other preemployment screening methods, a polygraph examination is a valid and essential tool for preventing job applicants with criminal backgrounds from gaining access to the customer's home. S. 1904 would arbitrarily ban polygraph examinations as a preemployment screening method.

Furthermore, pest control companies comply fully with state regulations governing the administration of polygraph examinations. S. 1904 would preempt state laws and deny responsible preemployment use of the polygraph under state regulation.

Finally, S. 1904 would allow the government to continue preemployment polygraph testing. H.R. 1212, passed by the House, exempts private security services and drug companies from the private-sector ban on polygraph testing. These exceptions for government and certain businesses attest to the validity and value of polygraph use. If the polygraph works to screen prospective employees for tasks affecting national security, judicious polygraph application can work to protect the public we serve.

We respectfully ask that you oppose S. 1904. Thank you for considering our concerns.

Sincerely,

HARVEY S. GOLD,
Executive Vice President.

FEATURE ENTERPRISES, INC.,
New York, NY, January 28, 1988.

Hon. STROM THURMOND,
U.S. Senate, Washington, DC.

DEAR SENATOR THURMOND: It has come to my attention that Senate Bill 1904 is presently before your Labor and Human Resources Committee for consideration. I am very concerned because S.B. 1904 would ban the use of polygraph for pre-employment screenings and periodic examinations, and severely limits its use for theft investigations in private industry. This proposed ban and severe limitations would not affect any government agencies and thus discriminates against the private sector.

The Polygraph, in the hands of experts, has proven itself an invaluable tool for pre-employment screenings, periodic examinations, and investigations of thefts in this company and other companies in the jewelry industry.

As a security professional, I have observed the polygraph prove itself to be both valid and reliable in this workplace during the past ten years. This company has not received any complaints of polygraph abuse from any employees or prospective employees during this period. Ten years ago, internal losses of diamonds and gold from this company were staggering and a voluntary polygraph program was instituted under my direction. At present, internal losses are minimal and my confidence in polygraph is maximal.

It is extremely unfair to disapprove the use of polygraph in the private sector and approve its use in all areas of government. Does the polygraph only work for the government and not the private sector? Of course not. Polygraph either works or doesn't work! I strongly believe it does work when administered by a highly qualified polygraph examiner.

Please give this letter your serious attention and consideration. I strongly urge you to oppose S. B. 1904 and vote against this discriminatory legislation. Remember, what is good enough for government should also be good for private industry!

Respectfully,

VINCENT J. LAMBRIOLA,
Director of Security.

Mr. THURMOND. Mr. President, I refer again to this chart. Here is a chart that tells the situation in every State in the Nation—every State, whether or not it has polygraph; 44 States have some form of polygraph testing now. Why should the Federal Government enter into this field? This field has never been delegated to the Federal Government, and there is no authority to go into it. We can pass a constitutional amendment and give them that authority, but why do it?

Forty-four States now have polygraph laws on the subject. I hope the Senate will take that into consideration and not, in one fell swoop, pass a Federal law that will strike down what 44 States have done. If States want a polygraph law, they can have it. If they do not want to have a polygraph law, they will not have it.

I especially ask the Senate not to strike down these State laws but let States continue in this field of jurisdiction, which they have a right to do under the Constitution, since this field has never been delegated to the Federal Government under the Constitution.

Mr. President, I thank Senator DURENBERGER for allowing me to speak at his desk at this time, so that I could point out these charts to the Senate.

Mr. President, I ask unanimous consent that the charts to which I have referred be allowed to stay up in the Senate until this bill is finished and voted on.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, I rise in strong opposition to the bill that is currently before the Senate. I will have a series of amendments later in the day, and I will have some I assume, given our time constraints, after cloture is imposed if it is imposed.

I would like to say, Mr. President, that few bills that have come before the Senate in the 3 years that I have

oppose S. 1904, the Polygraph Protection Act of 1987. Enclosed you will find a list of the business and trade associations who oppose S. 1904.

Sincerely,

ALBERT D. BOURLAND.

ORGANIZATIONS OPPOSED TO S. 1904, THE POLYGRAPH PROTECTION ACT OF 1987

U.S. Chamber of Commerce (Washington, D.C.).
Alabama Hotel & Motel Association (Montgomery, Alabama).
Alabama Retail Association (Montgomery, Alabama).
American Hotel & Motel Association (Washington, D.C.).
American Polygraph Association (Alexandria, Virginia).
American Rental Association (McLean, Virginia).
American Road & Transportation Builders Association (Washington, D.C.).
American Society for Industrial Security (Arlington, Virginia).
American Supply Association (Chicago, Illinois).
American Trucking Association (Washington, D.C.).
APCOA, Inc. (A Member of the National Parking Association)—(Cleveland, Ohio).
Association of Oilwell Servicing Contractors (Dallas, Texas).
Automotive Parts & Accessories Association (Lanham, Maryland).
Automotive Wholesalers Association of Tennessee (Nashville, Tennessee).
Bishop, Cook, Purcell & Reynolds (Washington, D.C.).
Bowling Proprietors Association of Southern California (Burbank, California).
California Jewelers Association (Los Angeles, California).
Central Station Electrical Protection Agency (Washington, D.C.).
Circuit City Stores, Inc. (Richmond, Virginia).
Committee of National Security Companies, Inc. (Consco) (Memphis, Tennessee).
Federation of Apparel Manufacturers (New York, New York).
Greater New York Retail Merchants Association (Great Neck, New York).
Illinois Association of Convenience Stores (Springfield, Illinois).
Illinois League of Savings Institutions (Springfield, Illinois).
Illinois Lumber & Material Dealers Association (Springfield, Illinois).
Illinois Petroleum Marketers Association (Springfield, Illinois).
Independent Electrical Contractors, Dallas Chapter (Irving, Texas).
Independent Fire Insurance Companies (Jacksonville, Florida).
Independent Sewing Machine Dealers Association, Inc. (Columbus, Ohio).
Indiana Retail Grocers Association (Indianapolis. Indiana).
International Association of Chiefs of Police (Gaithersburg, Maryland).
Iowa Grain and Feed Association (Des Moines, Iowa).
Jewelers of America (Washington, D.C.).
Kentucky Wholesale Liquor Dealers Association (Louisville, Kentucky).
Louisiana Association of Business & Industry (Baton Rouge, Louisiana).
Manufacturing Jewelers & Silversmiths of America, Inc. (Providence, Rhode Island).
Marriott Corporation (Washington, D.C.).
Metal Treating Institute (Jacksonville Beach, Florida).
Michigan Automotive Parts Association (Lansing, Michigan).
Michigan Blueberry Growers Association (Grand Junction, Michigan).
Monument Builders of North America (Evanston, Illinois).
Multi-Housing Laundry Association (Raleigh, North Carolina).
National-American Wholesale Grocers' Association (Falls Church, Virginia).
National Apartment Association (Washington, D.C.).
National Association of Catalog Showrooms (W. Simsbury, Connecticut).
National Association of Truck Stop Operators, Inc. (Alexandria, Virginia).
National Automatic Merchandising Association (Chicago, Illinois).
National Automobile Dealers Association (Washington, D.C.).
National Burglar & Fire Alarm Association (Washington, D.C.).
National Independent Dairy-Foods Association (Washington, D.C.).
National Moving and Storage Association (Alexandria, Virginia).
National Parking Association (Washington, D.C.).
National Pest Control Association (Dunn Loring, Virginia).
National Retail Hardware Association (Indianapolis, Indiana).
Nevada Association of Employers (Reno, Nevada).
North Carolina Petroleum Marketers Association (Raleigh, North Carolina).
North Carolina Tire Dealers & Retreaders Association (Durham, North Carolina).
Northeastern Retail Lumbermen's Association (Rochester, New York).
Ohio Automotive Wholesalers Association (Columbus, Ohio).
Petroleum Marketers Association of America (Washington, D.C.).
Precision Metalforming Association (Richmond Heights, Ohio).
Reid Psychological Systems (Chicago, Illinois).
Retail Bakers of America (Washington, D.C.).
Retail Merchants Association of Greater Richmond (Richmond, Virginia).
Service Station Dealers of America (Washington, D.C.).
Society of American Wood Preservers, Inc. (Falls Church, Virginia).
Society of Independent Gasoline Marketers of America (Washington, D.C.).
Tennessee Oil Marketers Association (Nashville, Tennessee).
Texas Automobile Dealers Association (Austin, Texas).
Texas Laundry & Drycleaning Association (San Antonio, Texas).
Texas Oil Marketers Association (Austin, Texas).
Texas Restaurant Association (Austin, Texas).
Texas Rental Association (Austin, Texas).
Texas Retail Grocers Association (Austin, Texas).
The Battle Mountain Gold Company c/o Burridge Associates, Inc. (Washington, D.C.).
Union County Chamber of Commerce (Union, South Carolina).
Washington Apartment Association (Tacoma, Washington).
Wine and Spirits Wholesalers of America, Inc. (Washington, D.C.).
Wisconsin League of Financial Institutions, Ltd. (Milwaukee, Wisconsin).
Wisconsin Retail Hardware Association (Stevens Point, Wisconsin).

AMERICAN MINING CONGRESS,
Washington, DC, December 8, 1987.

Hon. STROM THURMOND,
Labor and Human Resources Committee, U.S. Senate, Washington, DC.

DEAR SENATOR: The American Mining Congress (AMC) wishes to convey to you its opposition to the Polygraph Protection Act of 1987 (S. 1904). The bill, introduced on Tuesday of last week, is currently scheduled for full Committee markup this Wednesday. As the representative of the nation's mining industry, we are concerned that this legislation will prohibit the use of the polygraph as a legitimate personnel testing tool.

While the polygraph is not used extensively in mining, several sectors of our industry do make use of the polygraph. Their reasons center on concern for theft of high explosives or precious metals. Precious metals mining and processing operations are particularly susceptible to internal theft. As part of their loss prevention program, many such operations prefer to retain the option of preemployment and random polygraph screening to assure the integrity of their workforce.

AMC believes that the question of polygraph use is an issue best left to resolution in the workplace. We urge your favorable consideration of our views.

Sincerely,

JOHN A. KNEBEL,
President.

AUTOMOTIVE PARTS & ACCESSORIES ASSOCIATION,
Lanham, MD, December 14, 1987.

Hon. STORM THURMOND,
U.S. Senate, Washington, DC.

DEAR SENATOR THURMOND: I am writing to inform you of APAA's continued strong opposition to any lie detector ban legislation (S. 1904). This bill is an unwarranted intrusion into the hiring and firing practices of our members.

Up to 43% of business losses can be attributed to internal theft, according to Arthur Young and Company. Proper use of polygraphs can mean important protections for companies, preventing thefts before they occur and therefore avoiding severe damage to a company's financial position. While certain retail groups now support S. 1904 as a result of the very limited exemption permitting polygraph use for "ongoing investigations," failure to allow preemployment screening will continue to leave many businesses vulnerable to employee theft or damage.

APAA particularly notes that S. 1904 exempts government agencies, military and security personnel from the lie detector ban. It seems unjust to our members that this bill would shield government agencies from problem employees, but deny that same protection for a small business an owner may have worked all his life to build. If polygraphs are considered a valid measurement of a person's innocence or guilt for government use and for national security needs, why are they an invalid measurement for use by private businesses?

APAA's nearly 2,000 member companies strongly urge you to reject this ill-advised legislation when it is brought before the Senate Labor and Human Resources Committee. Both businesses and consumers need the protection afforded by polygraphs from the higher overhead costs and prices which are associated with increased incidences of employee theft.

Sincerely,

JULIAN C. MORRIS,
President.

WELLS FARGO ARMORED SERVICE CORP.,
Columbia, SC, February 1, 1988.

Hon. STROM THURMOND,
U.S. Senate, Washington, DC.

DEAR SENATOR THURMOND: Senator Kennedy recently introduced a bill which would restrict the use of the polygraph by private

There are many others. It would be impossible to list all of them here.

Mr. President, I am not going to take the time to read excerpts from all of those organizations. I just want to read a few here which I think would be representative of most of these organizations.

Here is one from the American Mining Congress.

The American Mining Congress (AMC) wishes to convey to you its opposition to the Polygraph Protection Act of 1987 (S. 1904). The bill, introduced on Tuesday of last week, is currently scheduled for full Committee markup this Wednesday. As the representative of the nation's mining industry, we are concerned that this legislation will prohibit the use of the polygraph as a legitimate personnel testing tool.

While the polygraph is not used extensively in mining, several sectors of our industry do make use of the polygraph. Their reasons center on concern for theft of high explosives or precious metals. Precious metals mining and processing operations are particularly susceptible to internal theft. As part of their loss prevention program, many such operations prefer to retain the option of preemployment and random polygraph screening to assure the integrity of their workforce.

AMC believes that the question of polygraph use is an issue best left to resolution in the workplace.

The Automotive Parts and Accessories Association:

Up to 43 percent of business losses can be attributed to internal theft, according to Arthur Young and Company. Proper use of polygraphs can mean important protections for companies, preventing thefts before they occur and therefore avoiding severe damage to a company's financial position.

APAA particularly notes that S. 1904 exempts government agencies, military and security personnel from the lie detector ban. It seems unjust to our members that this bill would shield government agencies from problem employees, but deny that same protection for a small business an owner may have worked all his life to build. If polygraphs are considered a valid measurement of a person's innocence or guilt for government use and for national security needs, why are they an invalid measurement for use by private businesses?

An excerpt from Timken Bearing:

1. We conduct routine testing of potential employees using computers.

If this "mechanical device" is considered a "lie detector" based on the fact that we verify the accuracy of some information input by the applicant, such methods for simply collecting data on potential employees would be prohibited by the bill.

2. Inclusion of the term "chemical device" in the definition of lie detector may prohibit employers from doing drug screening of applicants.

3. The qualifications prescribed for the polygrapher could be interpreted to apply to anyone administering a test where an individual's honesty is verified. (As under item 1, it is routine to verify certain information that job applicants provide in seeking employment.)

Among these qualifications is maintaining a $50,000 bond and an internship of six months under a professional who has also met the specified qualifications.

If those who administer tests to regular job applicants are deemed to fall into this category, the costs to employers would be prohibitive.

4. Again, if standard pre-employment tests were interpreted as falling under this law, the reliability of such tests would be destroyed by the requirement for employers to provide the applicant with the questions prior to the test and the answers and conclusions drawn after the test is completed.

Please clarify whether these are valid concerns given the current wording of S. 1904.

While protection of an individual's rights is the responsibility of all employers, bills such as this—which, through interpretation, can create unjustified restrictions on employers and their ability to evaluate job applicants—unnecessarily increase costs and reduce the competitiveness of U.S. businesses at a time when global competition is severe and many jobs are at stake.

This letter, as I say, was from Timken Bearing in Canton, OH.

Mr. President, I have a letter from Wells Fargo from which I wish to read an excerpt:

This legislation prohibits private companies, including companies engaged in security work, from using pre-employment polygraph screening, while allowing public agencies such as the police department and FBI to use the polygraph. Pre-employment screening is vital when interviewing for the sensitive security positions within our firm. We are the target of not only criminals, but also terrorists who seek to infiltrate security companies.

In most cases, pre-employment polygraphing is more important than post-incident polygraphing in the security business, as the harm that can be done is of such a large magnitude. For example, the FBI recently arrested members of the 'Los Matcheteros' terrorist gang-and charged them with an $8 million armored car robbery in Connecticut, a state where polygraphs are outlawed. The terrorists planted a member of their group inside an armored car company as a driver. He fled to Cuba with the funds, which were then used to fuel terrorism in Puerto Rico.

An excerpt from a letter from the Professional Lawn Care Association of America:

PLCAA represents over 1,300 lawn care companies throughout the United States, employing many thousands of people. Lawn care personnel have direct contact with a company's customers, and very often have a need to enter a customer's home. Our members are very conscious of hiring not only qualified people, but also employees who pose no risk to the customer or their property. Lie detector tests are one important tool used by some PLCAA members to help them in making a hiring decision.

An excerpt from Feature Enterprises:

Ten years ago, internal losses of diamonds and gold from this company were staggering and a voluntary polygraph program was instituted under my direction. At present, internal losses are minimal and my confidence in polygraph is maximal.

An excerpt from a letter from the National Pest Control Association:

The pest control industry sends 57,000 employees directly into 10 million homes nationwide. When the homeowner allows an unfamiliar person to enter the household, the security of life and personal property is squarely on the line.

When used with other preemployment screening methods, a polygraph examination is a valid and essential tool for preventing job applicants with criminal backgrounds from gaining access to the customer's home. S. 1904 would arbitrarily ban polygraph examinations as a preemployment screening method.

Mr. President, the excerpts I have given here are representative, I think, of the way the public feels about this matter. I could read letters from all these companies, but I just read excerpts from a few. I ask unanimous consent that the letters be printed in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

U.S. CHAMBER OF COMMERCE,
Washington, DC, February 11, 1988.

Hon. STROM THURMOND,
U.S. Senate, Washington, DC.

DEAR STROM: The U.S. Chamber of Commerce, on behalf of its approximately 180,000 members, respectfully urges you to oppose S. 1904, the Polygraph Protection Act of 1987.

S. 1904, introduced by Senator Kennedy (D-MA), would prohibit most private employers from using the polygraph for the purpose of screening prospective employees. Employers have found the polygraph to be an invaluable tool for deterring workplace crime and identifying security risks among job applicants. It helps to protect the financial health of American business and the health and safety of customers, employees and the public; therefore, limiting its use is not in the best interest of the American public or business.

The polygraph has proven its worth in assisting defense agencies in guarding national security; business should also have access to it. Congress has repeatedly overwhelmingly endorsed its use for this purpose.

On June 16, 1985, the House of Representatives voted 331-71 in favor of an amendment allowing the Department of Defense to increase the polygraph screening of personnel with access to sensitive information. On July 7, 1985, the Senate voted 94-5 to agree to the conference report containing a polygraph program.

On May 11, 1987, the House voted 345-44 for an amendment to the Department of Defense Authorization bill, offered by Congressman Bill Young of Florida, establishing a permanent polygraph program for national defense agencies. On November 19, 1987, the Senate voted 89-6 to agree to the conference report containing a permanent polygraph program.

Current employee theft raises the cost of goods to consumers by as much as 15 percent and continues to escalate. The Drug Enforcement Administration, which has endorsed polygraph use in employee-screening programs, estimates that one million doses of drugs are stolen each year from drug retailers, wholesalers and distributors. One employer, Days Inn of America, testified at a Congressional hearing during the 99th Congress that the use of the polygraph has helped to reduce its annual losses from more than $1 million to $115,000.

Crime in America is a serious, pervasive concern. Day care centers must be able to pre-screen prospective employees to prevent incidents of child abuse. Nursing homes must know if their sick and often helpless patients are at risk of death. Public utility companies, chemical plants, airlines and railroads are only a few examples of the industries that need to be able to screen prospective employees to help avoid public disasters.

The rights of employers to use the polygraph to protect their employees, their assets and themselves must be preserved. The Chamber respectfully urges you to

read a letter from the U.S. Chamber of Commerce:

U.S. CHAMBER OF COMMERCE,
Washington, DC, February 11, 1988.
Hon. STROM THURMOND,
U.S. Senate,
Washington, DC.

DEAR STROM: The U.S. Chamber of Commerce, on behalf of its approximately 180,000 members, respectfully urges you to oppose S. 1904, the Polygraph Protection Act of 1987.

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The polygraph has proven its worth in assisting defense agencies in guarding national security; business should also have access to it. Congress has repeatedly overwhelmingly endorsed its use for this purpose.

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I want to repeat that last statement, Mr. President.

One employer, Days Inn of America, testified at a Congressional hearing during the 99th Congress that the use of the polygraph has helped to reduce its annual losses from more than $1 million to $115,000.

Crime in America is a serious, pervasive concern. Day care centers must be able to pre-screen prospective employees to prevent incidents of child abuse. Nursing homes must know if their sick and often helpless patients are at risk of death. Public utility companies, chemical plants, airlines and railroads are only a few examples of the industries that need to be able to screen prospective employees to help avoid public disasters.

The rights of employers to use the polygraph to protect their employees, their assets and themselves must be preserved. The Chamber respectfully urges you to oppose S. 1904, the Polygraph Protection Act of 1987. Enclosed you will find a list of the business and trade associations who oppose S. 1904.

Sincerely,

ALBERT D. BOURLAND.

Mr. President, the list which the Chamber of Commerce has attached opposing this bill is a most imposing list. I would like for the Senators to listen to this list.

U.S Chamber of Commerce (Washington, D.C.).
Alabama Hotel & Motel Association (Montgomery, Alabama).
Alabama Retail Association (Montgomery, Alabama).
American Hotel & Motel Association (Washington, D.C.).
American Polygraph Association (Alexandria, Virginia).
American Rental Association (McLean, Virginia).
American Road & Transportation Builders Association (Washington, D.C.).
American Society for Industrial Security (Arlington, Virginia).
American Supply Association (Chicago, Illinois).
American Trucking Association (Washington, D.C.).
APCOA, Inc. (A Member of the National Parking Association)-(Cleveland, Ohio).
Association of Oilwell Servicing Contractors (Dallas, Texas).
Automotive Parts & Accessories Association (Lanham, Texas).
Automotive Wholesalers Association of Tennessee (Nashville, Tennessee).
Bishop, Cook, Purcell & Reynolds (Washington, D.C.).
Bowling Proprietors Association of Southern California (Burbank, California).
California Jewelers Association (Los Angeles, California).
Central Station Electrical Protection Agency (Washington, D.C.).
Circuit City Stores, Inc. (Richmond, Virginia).
Committee of National Security Companies, Inc. (CONSCO) (Memphis, Tennessee).
Federation of Apparel Manufacturers (New York, New York).
Greater New York Retail Merchants Association (Great Neck, New York).
Illinois Association of Convenience Stores (Springfield, Illinois).
Illinois League of Savings Institutions (Springfield, Illinois).
Illinois Lumber & Material Dealers Association (Springfield, Illinois).
Illinois Petroleum Marketers Association (Springfield, Illinois).
Independent Electrical Contractors, Dallas Chapter (Irving, Texas).
Independent Fire Insurance Companies (Jacksonville, Florida).
Independent Sewing Machine Dealers Association, Inc. (Columbus, Ohio).
Indiana Retail Grocers Association (Indianapolis, Indiana).
International Assocaition of Chiefs of Police (Gaithersburg, Maryland).

Mr. President, I especially call attention to the International Association of Chiefs of Police.

Iowa Grain and Feed Association (Des Moines, Iowa).
Jewelers of America (Washington, D.C.).
Kentucky Wholesale Liquor Dealers Association (Louisville, Kentucky).
Louisiana Association of Business & Industry (Baton Rouge, Louisiana).
Manufacturing Jewelers & Silversmiths of America, Inc. (Providence, Rhode Island).
Marriott Corporation (Washington, D.C.).
Metal Treating Institute (Jacksonville Beach, Florida).
Michigan Automotive Parts Association (Lansing, Michigan).
Michigan Blueberry Growers Association (Grand Junction, Michigan).
Monument Builders of North America (Evanston, Illinois).
Multi-Housing Laundry Association (Raleigh, North Carolina).
National-American Wholesale Grocers' Association (Falls Church, Virginia).
National Apartment Association (Washington, D.C.).
National Association of Catalog Showrooms (W. Simsbury, Connecticut).
National Association of Truck Stop Operators, Inc. (Alexandria, Virginia).
National Automatic Merchandising Association (Chicago, Illinois).
National Automobile Dealers Association (Washington, D.C.).
National Burglar & Fire Alarm Association (Washington, D.C.).
National Independent Dairy-Foods Association (Washington, D.C.).
National Moving and Storage Association (Alexandria, Virginia).
National Parking Association (Washington, D.C.).
National Pest Control Association (Dunn Loring, Virginia).
National Retail Hardware Association (Indianapolis, Indiana).
Nevada Association of Employers (Reno, Nevada).
North Carolina Petroleum Marketers Association (Raleigh, North Carolina).
North Carolina Tire Dealers & Retreaders Association (Durham, North Carolina).
Northeastern Retail Lumbermen's Association (Rochester, New York).
Ohio Automative Wholesalers Association (Columbus, Ohio).
Petroleum Marketers Association of America (Washington, D.C.).
Precision Metalforming Association (Richmond Heights, Ohio).
Reid Psychological Systems (Chicago, Illinois).
Retail Bakers of America (Washington, D.C.).
Retail Merchants Association of Greater Richmond (Richmond, Virginia).
Service Station Dealers of America (Washington, D.C.).
Society of American Wood Preservers, Inc. (Falls Church, Virginia).
Society of Independent Gasoline Marketers of America (Washington, D.C.).
Tennessee Oil Marketers Association (Nashville, Tennessee).
Texas Automobile Dealers Association (Austin, Texas).
Texas Laundry & Drycleaning Association (San Antonio, Texas).
Texas Oil Marketers Association (Austin, Texas).
Texas Restaurant Association (Austin, Texas).
Texas Rental Association (Austin, Texas).
Texas Retail Grocers Association (Austin, Texas).
The Battle Mountain Gold Company c/o Burridge Associates, Inc. (Washington, D.C.).
Union County Chamber of Commerce (Union, South Carolina).
Washington Apartment Association (Tacoma, Washington).
Wine and spirits Wholesalers of America, Inc. (Washington, D.C.).
Wisconsin League of Financial Institutions, Ltd, (Milwaukee, Wisconsin).
Wisconsin Retail Hardware Association (Stevens Point, Wisconsin).

Mr. President, those are some of the organizations that oppose this bill.

the doctrine that this is a government of enumerated powers. That this is such a government clearly appears from the Constitution, independently of the Amendments, for otherwise there would be an instrument granting certain specified things made operative to grant other and distinct things. This natural construction of the original body of the Constitution is made absolutely certain by the 10th Amendment. This amendment . . . disclosed the widespread fear that the national government might, under the pressure of a supposed general welfare, attempt to exercise powers which had not been granted. With equal determination the Framers intended that no such assumption should ever find jurisdiction in the organic act, and that if, in the future, further powers seemed necessary, they should be granted by the people in the manner they had provided for amending the act. It read: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people."

It is incumbent upon us to respect and abide by these constitutional principles.

In conclusion, I would like to make just one further point that I believe further emphasized the wisdom of our Constitution in reserving authority to our states.

DOUBLE STANDARD

If S. 1904 were to pass, it would establish a double standard in which the public sector would be allowed to use the polygraph for employee screening and incident investigation. However, the private sector would be much more limited in its use of the polygraph. How would we explain that to our constituents?

The Federal Government, and especially its national security agencies, apparently feel they need access to the polygraph to conduct their business, and they have access to it. Whether individual citizens or businesses need the polygraph to conduct their business is not a matter for the Federal Government but rather one for local governments to decide. If they decide it is not in their citizens' best interest to allow use of the polygraph, then they can outlaw it. That ban would not set up the national double-standard that S. 1904 would perpetuate.

I urge my colleagues to consider these issues during the debate today. Perhaps the constitutional question is abstract and not pertinent to contemporary political concerns; but the Senate of the United States has a solemn obligation to uphold the Constitution of the United States. This legislation, in my opinion, violates that obligation. I urge my colleagues to join with me in opposing S. 1904 and allowing our local governments to continue to do their job in exploring and debating this issue and developing their own body of legislation.

Now, Mr. President, a very able lawyer from Richmond, VA, Mr. David E. Nagle, has made an analysis of this bill, the benefit of which I would like to give the Senate. This is a letter that is written to Mr. Powell A. Moore, of Ginn, Edington, Moore & Wade, 803 Prince Street, Alexandria, VA 22314. Mr. Nagle says:

DEAR MR. MOORE: As an attorney who represents management in employment litigation, I am frequently called upon to advise employers regarding the lawful use of the polygraph in the workplace. I have accordingly kept abreast of efforts to secure federal legislation restricting employers' rights to conduct such tests. Pursuant to your request, I have reviewed Senator Kennedy's bill, S. 1904, and offer the following comments.

Even before it was formally introduced, Kennedy's bill was touted as a compromise measure, one that would resolve the enduring battle over polygraph testing. It was supposed to be a trade-off—the elimination of pre-employment and periodic examinations, in exchange for allowing testing in investigations into employee misconduct.

In fact, the bill as drafted will virtually eliminate all polygraph testing in the workplace. The circumstances in which testing can be conducted are so limited, the exposure to litigation is so substantial, and the penalties for violations are so severe, that I suspect the vast majority of employers have no alternative but to abstain from all testing. While I recognize this as the objective of the bill's patron, I fear many of the bill's current supporters are unaware of the true character of this legislation.

The issues raised here are complex, and in-depth analysis would be preferred, but the reasons that the bill fails as a compromise fall into three categories.

I. The bill does not provide an employer with a meaningful opportunity to utilize polygraph testing as part of an investigation into employee misconduct.

First, the bill does not allow testing in the course of investigations into drug use or drug sales on the premises, into allegations of sexual harassment, or many other matters relating to unsafe and/or criminal conduct on the job.

Second, in those limited subject areas where testing may be allowed, the employer must establish "reasonable suspicion" with respect to any employee tested, then file a formal report of the incident or develop a lengthy internal statement (a copy of which is given to the suspect) setting forth the basis for the suspicion.

It is this aspect of the bill, when viewed in conjunction with the risk of litigation and harsh penalties, that may lead employers investigating misconduct to discharge all employees in a group of suspects, rather than raise the issue of polygraph testing. If the polygraph is effectively made unavailable to help clear the innocent, or to help identify the guilty, the "protection" afforded employees under this legislation is of dubious value. Investigations into misconduct may be resolved in a non-discriminatory manner—through discharge of guilty and innocent alike.

Third, even in those situations where the employer is able and willing to accept the legal risks associated with testing to further its investigation, the suspect employee cannot be required to take the polygraph, and neither the test results nor a refusal to submit to a test can serve as the basis for discipline or discharge without additional supporting evidence.

An employer who does not utilize the polygraph needs no evidence to terminate an individual under the prevailing doctrine of employment at will, but under this bill, when an employee is found deceptive on a polygraph (or refuses to submit to a test) then an employer must have additional supporting evidence. A discharge that fails to meet this vague standard subjects the employer to harsh penalties.

II. The restrictions and requirements are so ambiguous as to be certain to result in much litigation.

While some aspects of the bill are comparable to many state laws limiting areas of inquiry and imposing examiner licensing requirements, other provisions go much further. For example, the bill prohibits the asking of questions "in a manner that is designed to degrade, or needlessly intrude" upon the examinee. As noted above, a discharge on the basis of polygraph test results is unlawful without "additional supporting evidence"—but there is no guidance as to what will be sufficient.

III. An employer acting in good faith and attempting to comply with the law might well be found in violation. The penalties for non-compliance are so severe that few employers will be willing to exercise their right to use polygraph in ongoing investigations.

Virtually all employers (even those who have never used polygraphs) would be required to post a notice to employees regarding this law; failure to post resulting in fines of $100 per day. Any other violations of the law can result in civil penalties of up to $10,000. There are no comparable penalties imposed for violations of our most significant employment laws, e.g., the National Labor Relations Act, Title VII of the 1964 Civil Rights Act, or the Equal Pay Act.

Furthermore, an individual can bring a private civil action under this bill, and if an employer is found to have violated this law, the person may be awarded "employment, reinstatement, promotion, and the payment of lost wages and benefits" as well as other "legal and equitable relief as may be appropriate"—perhaps opening the door to awards for pain and suffering, embarrassment, and punitive damages. To keep the wheels of justice rolling, of course, prevailing parties recover their costs and attorneys' fees as well.

In summary, as currently drafted, the bill does not do what its sponsors claim, but instead effectively eliminates employers' right to utilize polygraph testing in the investigation of misconduct, and the preservation of safety and property in the workplace. I fear that many of those who innocently and sincerely endorsed the notion of "compromise" have, in fact, been duped. If this bill is passed into law, I see no alternative but to advise my clients to eliminate all polygraph testing from their workplace.

Finally, if an explanation of my credentials is in order, I have published one law review article and several pieces in journals regarding polygraph in the workplace. I have lectured on this subject in 9 states to some 25 groups of employers, polygraph examiners, and university students, and I have served on the Virginia Polygraph Advisory Board since 1985 when I was appointed by Governor Robb.

Thank you for this opportunity to explain my concerns with this proposed piece of legislation. I sincerely hope you will be able to shed sufficient light on the true impact of this bill to bring about its defeat. If there is any other way in which I can be of assistance, please do not hesitate to contact me. I remain,

Sincerely yours,

DAVID E. NAGLE.

Mr. President, as I say, Mr. Nagle is a very able and prominent lawyer from Richmond, VA. I think his analysis clearly sets out the situation.

Mr. President, there are many organizations that oppose this bill. I will

view, it is no surprise that some are hesitant to tackle tough questions if they fear it will be negated by unnecessary Federal intervention.

LEARNING FROM EXPERIENCE

In my opinion, Mr. President, we did not have ample opportunity to hear from the States when we conducted our hearings on this issue earlier this year. I believe that we could have learned a great deal by hearing testimony from a representative group of State officials who have had experience with administering polygraph laws.

Instead, we heard from only one State official, Attorney General Robert Abrams of New York who asked for Federal legislation because he has been unable to get a State law passed in New York. I must say that as a former Governor, it was displeasing for me to see a statewide elected official appear before the Labor Committee petitioning the Federal Government to take over a responsibility that clearly belongs to the States.

EXPERIENCE OF STATES

Testimony that we did not hear, but should have, was submitted to the Labor Committee in writing by the former Secretary of State from Florida, Mr. George Firestone.

Mr. Firestone has had ample experience administering polygraph law in Florida, and he indicated his belief that polygraph regulation works. He said that he believes the public has a right to privacy and that that right should be protected. However, he said his experience proves it is possible to protect those rights without prohibiting polygraph testing which, he said, "has consistently proven that its merit to society outweighs its risk."

His experience also shows that, with proper regulation, the abuses we are concerned about can be virtually eliminated. There are more than 500 fully licensed polygraph examiners in Florida, conducting more than 300,000 tests annually. State law requires that each examinee be told he or she can file a complaint if there are any improprieties. Yet only one validated complaint had been filed against an examiner in the year before Mr. Firestone submitted his testimony to the committee.

RESPECTING DIFFERENCES

I also believe that the Florida experience underscores another important point that I made earlier. In discussing States rights, I indicated that there may be differences in the States that require them to have different regulations. Mr. Firestone gave us a perfect example: He said that Florida is a particularly transient State where traditional background investigations are frequently impossible to perform. Further, it also has a large immigrant population.

Proponents of a polygraph ban say that background investigations and reference checks are a suitable substitute for polygraph testing. However, they are not always possible. Mr. Firestone pointed out that in Florida—and, of course, in many other States—the use of the polygraph actually allows residents to establish themselves in the work force. It is not the employment barrier that polygraph opponents so often claim but rather an opportunity for employment that might not otherwise be available.

Mr. Firestone said that the polygraph provides the business sector with an objective method of minimizing risk to itself and to the public by assuring the integrity of potential employees.

It benefits all of us when those who are qualified to work can find jobs.

EXONERATING THE INNOCENT

Further, State officials have argued their citizens should have access to the polygraph because it often serves to protect the jobs of employees who may be working in an area where theft occurs. There are many instances every day in American business and industry where a crime is committed and several employees are implicated. Without the polygraph, the employer may have felt it necessary to dismiss all of them. However, when he has access to polygraph test results, the person who committed the crime can more easily be determined—and the innocent employees exonerated, instead of fired. Whether we agree that this works or not is not the issue. The issue is whether or not local policymakers believe it does. Those who believe this is a useful tool for that purpose have the constitutional authority to allow their citizens to use it. Many States have found it can be especially effective when they enforce their own sets of standards, restrictions, and practices regarding the polygraph.

If the Congress were to outlaw polygraph testing in the private sector, as S. 1904 would require, the Federal Government would be barging into an area where it has neither the jurisdiction nor the ability to adequately regulate. The consequences could be to intrude on the legitimate right of local authorities to manage their own affairs.

REGULATION, NOT PROHIBITION

The legislation that we are considering here today would have far reaching and sweeping affects on American businesses, on employees and prospective employees, and on the body of polygraph law that is being developed by the States. Before we take such a major step, I believe we are obligated to develop a much more substantial hearing record than we have so far. There are many who feel that regulation, and not prohibition, is the key to protecting our citizens. I believe we need to learn much more about the successes and failures of the States' experience with regulation and bans on polygraph testing.

We would need to have good reason to strip polygraph regulation from the purview of the States, especially since they have developed a significant body of law already on this issue.

STATES ARE BEST REGULATORS OF SERVICES

It traditionally is the purview of the States to regulate commerce within their boundaries. They have mechanisms to certify that those who deliver health care services to residents are qualified to do so. They oversee insurance and real estate brokers, utility companies, doctors, lawyers, and dentists, to name just a few.

The States are equipped to regulate the services offered by polygraph examiners as well.

Assistant Attorney General Bolton also has addressed this issue. He said:

> Polygraph misuse may be more appropriately deterred by restricting the conditions under which polygraphs are administered rather than prohibiting their use altogether. The states are better equipped to make those determinations.

OTHER PROTECTIONS

Mr. President, besides existing State law, other mechanisms are in place to address the issue of polygraph abuse in the private sector: namely, the collective bargaining process and the courts.

The courts provide an appropriate forum for redress for any citizen who feels his or her rights have been violated.

American workers have additional protection from polygraph abuse through the collective bargaining process. Mr. William Wynn of the United Food and Commercial Workers Union has said that 90 percent of the union's collective bargaining agreements prohibit polygraph testing.

Labor and management have the tools to find their own solutions in conjunction with existing State law on polygraph testing. This system allows even more fine tuning than State law alone.

I recognize that there may be abuses in the polygraph industry, and I urge the industry and the States to correct these deficiencies. However, under our constitutional system, not every problem has a Federal solution. If a Federal solution is desired, but not constitutionally available, then there is a provision for amending the Constitution wherein these additional powers can be granted.

THEORY OF NATIONAL POWER

In spite of the conclusive evidence to the contrary, it has sometimes been urged that the framers intended that Congress should have the power to deal with any truly national problem, whether that power is delegated to it or not.

It was this theory of national power which was presented to the Supreme Court in the case of Kansas versus Colorado in 1907 by President Theodore Roosevelt's Attorney General.

The Supreme Court's decision on this issue was very clear, and reads in part:

> The proposition that there are legislative powers affecting the nation as a whole which belong to, although not expressed in, the grant of power, is in direct conflict with

I believe that governing the polygraph industry is not beyond "the competence of the individual States," and I see no need for uniformity in national policy. In fact, I believe this issue requires the diverse approaches of State-by-State legislation that are being developed to meet the different needs of the citizenry of our various States.

As Members of the U.S. Senate, it is incumbent upon us to protect and ensure the proper balance of power between the States and the Federal Government. This legislation has the opposite result. It is an intrusion into an area never delegated to the Federal Government.

STATES PRODUCE BETTER LEGISLATION

The wisdom of the framers is evident today through the application of their arguments to the issue before us. The principles of federalism are not just abstract concepts. I believe we are much likely to get a more precise body of polygraph law that is much more responsive to the needs of our citizenry if the law is developed on a State-by-State basis.

QUESTIONS LEFT UNANSWERED

S. 1904 simply does not and could not address the many complex issues that should be explored regarding polygraph regulation. Questions involving the merit of preemployment testing verses incident-specific testing. Issues such as the diverse body of opinion concerning the validity of polygraph testing and how to maximize the chances of obtaining the most accurate results when the tests are given; and basics such as detailing and enforcing protections for examinees' rights.

However long and hard we might work to try to develop the perfect bill, I believe we would always fail. I do not believe that the Congress of the United States ever could or should write legislation that would adequately address all of the subtle and complex issues involved in the polygraph debate. We do not have the authority to do so, even if we could. We are bound by the Constitution to allow the States to resolve these questions. They, and not the Federal Government, clearly are empowered to govern regarding this issue.

Because the State government provides a better and closer ear to hear the voices of individual citizens, the States will be better enforcers of the legislation they do develop. They will more quickly find out how it is working and be able to follow up with amendments that assure that their laws continue to be responsive to the needs of their citizens.

REASONS FOR STATE AUTHORITY

As many of you know, the administration strongly opposes the ban on polygraph testing contained in S. 1904. I received a letter from Assistant Attorney General John Bolton, who outlined some of the reasons for the administration's opposition. In it, he also underscores the administration's strong support for the principles of federalism. Mr. Bolton outlined a number of reasons why States are the appropriate functional jurisdiction for regulating the polygraph industry. I would like to relate some of those reasons to you today.

The first is accountability. State governments, by being closer to the people, are more able to be responsive and accountable to the needs and desires of their citizens.

Second, participation. Citizens are better able to be involved in developing legislation at the State level, resulting in a clearer sense of their actual needs, which in turn are reflected in the legislation they help to develop.

Third, diversity. The citizens of different States may well have different needs and concerns. If this matter is left to the individual States, a much richer, more diverse, and more appropriate body of law will be developed. If the Federal Government sets the policy, public policies must conform to a low common denominator in order to cover everyone with the same umbrella.

Fourth, experimentation. The States, by providing diverse responses to various issues, allow us to test many different approaches to solving public policy problems. One State may seize a novel idea that no one in Washington would have thought of but which is a fitting solution to a particular problem. Without this well-spring of creativity, our lawmaking would become stale and sterile.

And that leads me to a fifth point, containment. If experiments in public policy are not successful, they can be tremendously damaging if imposed on a national scale but much less so at the State level. As Mr. Bolton points out, "While the successful exercises of state regulation are likely to be emulated by other States, the unsuccessful exercises can be avoided."

In fact, the heated debate among scientists and scholars about the validity of the polygraph is evidence that this issue has not been resolved to the point that any national policy could be formulated.

POLICY UNIFORMITY

There are clearly issues where there is a need for national policy uniformity. We must have a uniform foreign policy if we are to effectively deal with other nations. If our foreign policy were dictated by the 50 States instead of by the Federal Government, our effectiveness in the world arena would be severely diluted. Further, the need for an efficient transportation system argues strongly for national rather than State regulation of our airline, maritime, and rail systems. There are other examples of things that the Federal Government is better equipped to handle than the States, but polygraph law is not one of them.

The States are actively engaged in assuming this responsibility. Thirty-two of the fifty States have some kind of license or certification requirements for polygraph examiners. Forty-four of the fifty States have laws governing the use of the polygraph in the workplace; and 33 of the 50 States have addressed this issue legislatively since 1980.

STATE-BY-STATE ANALYSIS

For example, the State of Massachusetts addressed this issue as recently as 1982. The law bans most polygraph testing and requires polygraph examiners in private practice to be licensed.

Utah has required polygraph examiners to be licensed since legislation was passed in 1973.

The laws in the home States of the other Members of this body reflect the richness and diversity of law that our States are developing.

Alabama has required since 1975 for a polygraph examiner to be licensed. This law was revised as recently as 1983.

In Arkansas an examinee must be told the test is voluntary and State licensing is required.

Florida requires a State license. Georgia requires questions to be provided in advance in writing, and prohibits questions on race, religion or politics.

Louisiana has a license requirement, as well as Mississippi.

New Mexico prohibits questions on sexual affairs, race, creed, religion, union affiliations or activity unless agreed to by written consent. Virginia requires a license and prohibits questions similar to those prohibited by New Mexico.

Mr. President, as I have already mentioned, 44 States have laws governing the use of polygraphs in the workplace. I urge my colleagues to examine this chart, before voting on this issue.

STATES SHOW "COMPETENCE"

I believe that this chronicle of State law presents the case more effectively than any argument I can make of the States' ability and willingness to regulate or ban the administration of polygraph tests. Only the States have the power and the ability to develop a body of polygraph law that will address the many complexities this issue presents. If polygraph abuse is a problem in one State, then that State has the option of outlawing its use there. But other States may find that it is a tool that is being used responsibly and that it is contributing to the stability of the companies operating there. If so, those States have the option of regulating it to protect citizens from abuse, as so many have done.

Mr. President, S. 1904 completely undermines the solutions fashioned, through their legislative process, by the people of these and other States. When the Federal Government threatens to overrule the States on issues that are clearly in their pur-

Mr. BYRD. Mr. President, the Senator's understanding is correct as far as I know. Senators may call up nongermane amendments today under the understanding, but I think the intention of the acting leader, and colleagues on this side, is to, as well as possible, keep it in the general confines of germaneness today.

Mr. SIMPSON. Mr. President, the purpose of the exercise is to have a debate on polygraph, so I hope that those who want to have an honest debate on polygraph will visit with those who have nongermane amendments that do not really deal with polygraphs so that the debate can be had as it should be had on a very serious issue.

Mr. BYRD. All right. Mr. President, I am satisfied on all four corners of the understanding. I ask unanimous consent, however, that upon the disposition of the polygraph bill, the Senate proceed to the consideration of the intelligence authorization bill.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. BYRD. Now, Mr. President, I think we have reached a good understanding and it will be my intention, may I say to all Senators concerned, that upon the disposition of the intelligence authorization bill I will do everything I can to proceed to the consideration of the Price-Anderson legislation.

Mr. SIMPSON. Mr. President, that would be a clarification; that is upon disposition of the intelligence bill regarding whether it is in agreement or final passsage, if it should get into contention, we will still go forward with the Price-Anderson, House version?

Mr. BYRD. Yes. That is absolutely correct.

So all Senators on both sides are aware of the intentions of the majority leader insofar as these three measures are concerned.

I thank the acting leader. I thank the distinghished Senator from Massachusetts [Mr. KENNEDY] and the Senator from Utah [Mr. HATCH].

Mr. President, I yield the floor.

The PRESIDING OFFICER. The acting minority leader is recognized.

Mr. SIMPSON. Mr. President, I want to thank very much Senator QUAYLE for his assistance. He is a spirited advocate of his position and I respect that greatly and because of his persistent advocacy we have reached a result which will bring us to debate on the polygraph bill, which is something we all wish to do and the American public will want to hear that debate. I thank the majority leader for his unusual courtesies and extreme patience with me in my role as acting leader; and the Senator from Massachusetts who, I know along with our ranking member, Senator HATCH, do very much want to finish this bill. We have arranged the path to do that and I thank him sincerely. I thank the Senator from South Carolina for his courtesy.

The PRESIDING OFFICER (Mr. DASCHLE). The Senator from South Carolina is recognized.

Mr. THURMOND. Mr. President, I know that many Members of this body are concerned about the potential for polygraph abuse. There certainly is the possibility that examiners could use the tests to ask inappropriate or embarrassing questions to examinees. We don't want to see these things happen and, in fact, want to see such practices stopped when and if they do occur.

However, the question I ask is whether the Congress of the United States is the appropriate legislative forum for addressing these questions. As I have said during previous meetings of the Senate Labor Committee, I strongly believe it is not. I believe that the Constitution of the United States clearly grants jurisdiction over this issue to the States. Moreover, I believe that the States have proven they are much better to deal with the complexities of this issue and to develop the best legislation to meet the needs of their citizenry than the Congress.

PRINCIPLE OF FEDERALISM

As you know, I am deeply devoted to the principle of federalism. This is the fundamental issue before us today. We may differ on whether the polygraph works. We may disagree on whether use of the polygraph should be allowed in the public sector and denied to the private sector. Moreover, we may disagree on the best way to protect the rights of individual citizens who are asked to take polygraph examinations.

However, I don't believe we can disagree on whether we should be guided by the Constitution, and in particular the principles of the 10th amendment to the Constitution, in our deliberations about new legislation.

One of the axioms of American constitutional law is that Congress has only powers that are delegated to it by the Constitution, or reasonably implied from those so delegated. When Edmund Randolph, a delegate from Virginia, proposed the Virginia plan in the Constitutional Convention of 1787, it contained a principle by which the powers of Nation and State could be divided. It stated:

* * * The national legislature ought to be empowered . . . to legislate in all cases to which the separate states are incompetent, or in which the harmony of the United States may be interrupted by the exercise of individual legislation.

This outlined a principle rather than a method of allocating powers, and as a principle, it was approved by the Constitutional Convention. Two months later, the convention gave these instructions regarding national powers to those who would be formulating the text of the Constitution:

The national legislature ought to possess the legislative rights vested in Congress by the Confederation; and, moreover, to legislate in all cases for the general interests of the Union, and also in those to which the states are separately incompetent, or in which the harmony of the United States may be interrupted by individual legislation.

Acting upon this instruction, the committee reported back to the convention the specific enumeration of the powers of Congress found in article I, section 8. The committee, adhering, as did the entire convention, to the principle of delegated powers, thus gave to the new Congress all of the powers then believed to be described in the article of instruction. Furthermore, it provided, in article V, a means by which those powers could be altered when necessary.

PRESERVING INDIVIDUAL LIBERTY

I fear we have a tendency to disregard this principle that was so central to the formulation of our Constitution. Yet it is fundamental to the preservation of individual liberty and to preventing the consolidation of overwhelming governmental power.

The delegates to the Constitutional Convention were well aware of the abuses which flowed from the absolute coalescence of power in one governmental authority. Fresh from their experience with tyranny, they conceived a government of limited and delegated powers.

Their prime concern was that the people maintain their sovereignty. In order to accomplish that, power was first divided between the people and the government, reserving to the people the control of the power allotted to the government. This power was then divided between the Federal and State governments. These parts, in turn, were split up among the coordinated legislative, executive, and judicial bodies.

Through these safeguards, they believed they would be able to prevent a highly centralized government which historically have been fatal to civil liberty.

CLOSER TO THE PEOPLE

According to Thomas Jefferson, limiting government to its proper sphere was the very essence of republican government; and an important element was assuring strong and viable local governmental authorities. To Jefferson, local governments were closer to the people, and consequently, more safely trusted than the national Government.

I speak out about federalism so often because I believe firmly this is a central principle in maintaining a whole system designed to secure limited Government and individual liberty.

COMPETENCE OF THE STATES

The people of the States created our National Government and in so doing, delegated to it specific powers relating to matters they felt were beyond the competence of the individual States Our founders trusted the States to govern the affairs of their citizens unless there was an overriding need for uniformity in national policy.

Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. Five minutes and twelve seconds.

Mr. BYRD. Mr. President, I thank the distinguished acting Republican leader, who is doing everything he possibly can to help to resolve this matter in a way that will see the Senate complete action on the polygraph bill in a very reasonable length of time, without nongermane amendments, and allow the Senate to go to the intelligence authorization bill and, hopefully, to complete action on that before the break. I thank the distinguished acting Republican leader for his efforts. He wishes some additional time so that he can make some contacts.

I ask unanimous consent that my privileged status in this situation be preserved for an additional 20 minutes, that the status quo remain the same for 20 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, I believe that if I were to yield the floor now and someone put in a quorum call and the quorum extended beyond the point of my 20 minutes, I would lose my privileged status to move to take up the intelligence authorization bill. Am I not correct?

The PRESIDING OFFICER. The Senator is correct.

15-MINUTE RECESS

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate stand in recess for 15 minutes.

There being no objection, the Senate recessed at 12:30 p.m. until 12:45 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer [Mr. CONRAD].

The PRESIDING OFFICER. The majority leader is recognized.

Mr. BYRD. Mr. President, I yield to the distinguished acting Republican leader for whatever he wishes to say or whatever he may wish to propose. We have had some discussion now. I think we all understand the desire on the part of myself that the Senate complete action on the polygraph bill and the intelligence authorization bill before the Senate goes out for the break, and hopefully get on the Price-Anderson bill. I am not suggesting the Senate complete action on that bill before the Senate goes out, but, at least, upon its return, it would be on that measure.

But, insofar as the intelligence authorization bill and the polygraph bill, which is the pending bill, are concerned, we had our recess and I would be interested in knowing what the distinguished acting leader is in a position to indicate at this point, based on his conversations.

Mr. SIMPSON. Mr. President, I have visited with my colleagues on this issue. Some have been deeply involved in this for many months. I believe that the law of the land is—and you can propound this or we can do it in the form of a gentlemen's agreement which we did quite successfully the other evening. I was pleased with the results of that. We never varied from our agreement one whit, and that was a long, long evening, as I recall.

So we would then proceed with our business on the polygraph legislation today. We have several amendments. We would go to that immediately upon the arrival at an agreement. We would keep people working here this afternoon doing the Senate's business. We would vote cloture tomorrow in the a.m., as set by the majority leader.

We have amendments of Senators QUAYLE, NICKLES, GRAMM, WALLOP, MCCONNELL, KARNES, SYMMS, COCHRAN, and BOSCHWITZ. As I am able to determine, all of those are subject to reasonable time agreements.

But, in any event, we know that cloture is tomorrow and that we have business to do. Then, after the cloture vote tomorrow, should it be invoked, we would go and give consent to go then to the intelligence authorization legislation tomorrow. That should not be terribly contentious from what I understand here. Then the majority leader could go forward and lay down or begin to address Price-Anderson before we go out for the recess.

I can say that I am not aware personally whether all of the amendments are totally germane, but I do not know of any that are detonating devices. I do not know of those here. I believe that the purpose of the Senate will be served. We will debate and we will have another item of business to go to and be prepared to go to that tomorrow.

That is the general outline. We can develop that further as to motions or activity or protection as you wish.

Mr. BYRD. Mr. President, I am happy to enter into a gentlemen's understanding with the distinguished acting Republican leader. I have entered into those understandings with him before and he has always kept them to the letter. He has had sufficient discussions with his colleagues on his side of the aisle to know what he is talking about and to know what can be counted upon.

I think that the proposal as he has outlined it here is perfectly agreeable to me. It would be as follows: That the Senate continue on the polygraph bill today; there are Senators on that side of the aisle who are ready to call up amendments; that the Senate will debate those amendments, act on them during the afternoon. We will have the cloture vote on tomorrow. Upon the disposition of this legislation, which will undoubtedly be clotured on tomorrow, the majority leader would be given consent to proceed to the consideration of the intelligence authorization bill. So there would be no question about getting it up. And that upon the disposition of that bill, as I understand it, the majority leader would be able to take up—I assume we are talking about consent; I have as many problems on my side as there are on the other side on that bill; maybe more—that I could have consent to take up, at least go to, Price-Anderson before the Senate goes out for the recess.

Mr. SIMPSON. Mr. President, two inquiries: that under this proposal the amendments to the polygraph measure would be germane to the subject matter of the bill and not any type of postcloture germaneness test as we do our business today, would that be agreeable?

Mr. BYRD. Yes. That is agreeable.

Mr. SIMPSON. And that at the time of going toward Price-Anderson that it would be the House bill that we would be dealing with?

Mr. BYRD. It would be the House bill.

Mr. President, the gentlemen's agreement is fine with me. I do not intend to try to lay that in stone. As I say, I do not care to attempt to lay the details of this understanding into cement. Because the gentlemen's understanding is fine with me, absolutely fine with me. But I wonder if I can get unanimous consent that upon the disposition of the polygraph bill and the intelligence authorization bill, that there would be no objection to my going to the House Price-Anderson bill?

The PRESIDING OFFICER. Is there objection?

Mr. SIMPSON. Mr. President, I——

Mr. BYRD. With the understanding that action would not occur on that measure this week.

Mr. SIMPSON. Mr. President, I think I need to—we should resolve the issue of germaneness today as we debate precloture; that it will be regular order of amending and debating and that there be ordinary rules of our procedure, with regard to that?

Mr. BYRD. In other words, there may be nongermane amendments called up today?

Mr. SIMPSON. There might be, but I am told it might be a question of judgment; that they are not truly nongermane such as dealing with Contra aid or something of that nature; but they might be something with regard to employee testing or something of that nature.

Mr. BYRD. Yes. That is understood.

Mr. QUAYLE. Will the Senator yield?

Mr. BYRD. I yield.

Mr. QUAYLE. At least my amendments that I intend to offer will be generally germane. They may not be germane on the postcloture situation, but they will be germane to the discussion of the bill. But, however, I would hope that we operate under the regular order that if another Senator wants to offer something that is nongermane that he has, or she, perfectly has that right before cloture is invoked? We have not restricted the Senate's—we have not imposed any restrictions on the Senate's nongermane rules?

Mr. BYRD. Mr. President, I ask unanimous consent that the vote on the polygraph bill occur and final passage of the polygraph bill occur no later than 9 o'clock p.m. today, provided further that no nongermane amendments be in order, and that no motions to commit with or without instructions be in order.

The PRESIDING OFFICER. Is there objection?

Mr. SIMPSON addressed the Chair.

The PRESIDING OFFICER. The acting minority leader.

Mr. SIMPSON. I believe that I would defer to my colleague from Indiana who is one of the floor managers and active participants with this legislation. And I do so at this point.

Mr. BYRD. Mr. President, I yield for the reservation by the Senator from Indiana. I do not have to yield for that.

Mr. SIMPSON addressed the Chair.

The PRESIDING OFFICER. The majority leader has yielded to the Senator.

Mr. BYRD. No. The Senator can reserve the right to object. I maintain the floor.

Mr. SIMPSON. Mr. President, reserving the right to object, the procedural aspects of this matter are that the majority leader has every right under the rules to request a nondebatable motion to go forward with the intelligence authorization. There is nothing to preclude that or prevent discussion of that.

If we were to go forward with the polygraph legislation, and we are apparently ready to do that, we have germane amendments that are thoughtful and address the bill, and those are ready to be presented. But they have not yet been presented to this time. And I would hope that my colleagues would have come here with the purpose of amending, knowing full well that cloture has been requested, and will be performed tomorrow 1 hour after convening; that they would have come forward with the amendments.

At this point, I inquire of the majority leader. The time for the vote certain, together with the remaining part of the request that no nongermane amendments be in order and no motions to commit or recommit be in order, that the purpose of that, vis-a-vis the cloture procedure tomorrow, would be what?

Mr. BYRD. The purpose of the request, as I have made it, is to rule out amendments we know nothing about, have not seen, could range from the points of the compass from north to south, and the Senate would dispose of this bill today. The cloture vote on tomorrow would be vitiated.

Of course, I could not go to the intelligence authorization bill except by unanimous consent unless I find myself in the position such as I am in right at this point, in view of the fact that the Senate has been on this bill almost 24 hours, it will soon be 24 hours, has made no progress whatsoever, there has been very little debate on it other than debate on nongermane amendments, nongermane amendments were called up, and were withdrawn with no progress at all.

I am sure there are Senators who have germane amendments but they have not been to the floor and called them up. Today is a good day, it is Wednesday, to get some business done. I am in a position right now to go to the intelligence authorization bill, and I would not require unanimous consent to go to it, if I could do that within the next 5 minutes. Hopefully the Senate would complete action on that bill today.

From what I have heard said, it is believed by the manager, the chairman, I believe we can complete action on that today, and tomorrow the Senate will automatically vote on the cloture motion on the polygraph bill.

So in that way I could be sure that at least the Senate would spend these 3 days on these two bills, and hopefully we could finish both bills in those 3 days. But if I throw away the next 5 minutes, I then lose my privileged position that I am in at the moment of moving to the intelligence authorization bill and having that motion not debatable after which I would have unanimous consent to go to it, and one Senator could block that. It is for these reasons that I feel constrained to go to the intelligence authorization bill now unless we can get a unanimous consent request that action be completed on the polygraph bill by no later than 9 o'clock p.m. tonight, that there be no nongermane amendments, and I would have to add to that now the request that upon final disposition of the polygraph bill the Senate proceed to the consideration of the intelligence authorization bill, else I will have lost the privileged status that the situation is in right now.

Mr. SIMPSON. Mr. President, is the majority leader asking unanimous consent that at the completion of the polygraph measure, we go immediately to the intelligence authorization bill?

Mr. BYRD. Yes. I am hooking that to the first request, that the Senate complete action on the polygraph bill no later than 9 o'clock p.m. today; that no nongermane amendments be in order; and that no motion to commit, with or without instructions, be in order.

Mr. SIMPSON. Mr. President, I respectfully say that I must object to that. I know that the majority leader could go tomorrow to the same position and have a nondebatable motion tomorrow, with procedures tonight that would assure that.

I am still ready to produce amendments that are germane to the polygraph bill, but I know that he is on limited time, and I will not transgress.

I think we will have to go forward as the majority leader would wish to go forward at this point.

Mr. BYRD. Mr. President, how much time do I have before morning hour is closed?

The PRESIDING OFFICER. Three minutes remain.

Mr. BYRD. I ask to proceed for 2 minutes. That will leave me 1 minute.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, let me change the request.

I ask unanimous consent that the Senate complete action on the polygraph bill today; that there be a final vote on passage no later than 9 o'clock p.m. today; that no nongermane amendments be in order to the bill; that no motion to commit or recommit, with or without instructions, be in order; provided, further, that on tomorrow, during the morning hour, I be permitted to be in the position that I am right now, of making a nondebatable motion to proceed to the intelligence authorization bill.

The PRESIDING OFFICER. Is there objection?

Mr. SIMPSON. Mr. President, I reserve the right to object.

Mr. QUAYLE. A couple of people have said to me that on amendments, with a time certain tonight, we would move to polygraph. If the majority leader wants to move to intelligence after polygraph, this Senator will not object to that. I have a number of amendments to offer and will probably offer them at some time. They are germane to the bill. A couple may not be germane in a postcloture-type situation, but they are with respect to preemployment screening.

Mr. BYRD. Mr. President, are my rights being preserved?

The PRESIDING OFFICER. Yes.

Mr. QUAYLE. They are germane to preemployment screening.

So I would not object, if it is the desire of the majority leader to move the authorization bill after we dispose of the polygraph bill, whether it is tonight or tomorrow. I could not give a time certain tonight.

The PRESIDING OFFICER. The 2 minutes have expired.

Mr. BYRD. I have 1 minute remaining.

Mr. President, this thing is so involved from the standpoint of parliamentary procedure that I do not have the time to describe the position I have to be in on tomorrow and what I have to do to get into that position.

I ask unanimous consent that I may preserve the status quo, vis-a-vis my position and the nondebatable motion I could make, for 10 minutes.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. BYRD. Mr. President, the distinguished acting Republican leader has indicated that on tomorrow, I could be in the same position to make a nondebatable motion. I might or I might not be. One Senator can block me from getting into that position.

So that report is long overdue right now and to delay it until the 1st of October of 1988 just will not wash.

Maybe I ought to spell it out in English. A year is the length of time it takes the Earth to orbit the Sun. We read all about that on February 29.

In practical usage, it is either 365 days or 366 days in a leap year. Either way, it is fairly precise. You can get down to where that orbit is 365 days and 6 hours or 365 day and 4 hours and 37 minutes, or whatever. But we are talking about what a year is in terms of the language in the ABM Treaty, which is being violated by the United States of America right now.

Maybe the Russian version of a year is different, but I doubt it. Regardless, we are, according to the rules and procedures of the Senate, bound by the English version, I suppose. And the English version is certainly unambiguous.

Mr. President, the point is this. On October 3, 1987, last year, the parties, meaning the Soviet Union and the United States of America, did not, in compliance with the treaty, conduct a review of the ABM Treaty, nor did they even begin such a review. Nor did they even set a date for beginning such a review. And that, as I say, is the hangup between the administration and this Senator.

I think I have been trying to support this administration. The President and I have been very good friends for a long time. That does not enter into it. But I refuse to be a yes-man to the U.S. State Department when they start playing fun and games with what a treaty says and what it means.

On October 3, 1987, there was no option under the terms of this treaty but to begin to conduct a review of the ABM Treaty with respect to violations by the Soviet Union and by the United States, if any. But the two parties, the Soviet Union and the United States, did not move a peg. They did none of those things; none. And it was because the United States—not the Soviet Union—it was because the United States did not want to do it. Or they had this big deal going. Mr. Gorbachev was coming over here, smile and conduct his PR campaign and get out of his car on Connecticut Avenue and wave to the people and everybody said: "Hooray, hurrah; peace is at hand." Not quite.

Some, in fact, may believe that the United States wished to avoid this because the administration would have been required, no option about it, to protest at least one material breach of the ABM Treaty by the Soviet Union. There is a widespread belief that the administration may not have wished to discuss a material breach of one treaty, meaning the ABM, amidst all of this PR hype, public relations effort, on behalf of the INF Treaty. Maybe they assume that the American people are stupid and cannot handle the truth and therefore they will not share it with them. But I hope that is not the case.

But this much is clear, Mr. President: At the insistence of the United States, 5 months have elapsed since the day on which the meeting was required under the terms of the treaty to begin and that failure on our side—this is not Soviet duplicity, this is State Department duplicity—that failure stripped of all the legal blue smoke and mirrors provided by the lawyers down in Foggy Bottom in that vast bureaucracy is, in fact, quite simply stated, a clear violation by the United States of the ABM Treaty.

So, Senator BUMPERS was right, last October. I was wrong. I did not believe he knew about any ABM violation by the United States. So to a certain extent I may be eating a little crow here. But I am not sure that is the violation that Senator BUMPERS has in mind.

One further word and I shall conclude. I am sure my friend from South Carolina, a distinguished and able lawyer, will agree the Constitution requires the President to see that the law is faithfully executed. The Constitution makes a treaty supreme law, which binds all Americans including even, or perhaps particularly, the President of the United States. The President surely agrees that he should obey the law and without delay direct that the required meeting occur immediately. Not just sometime this year; not by October 1 of this year; but immediately. That is what the treaty says and the treaty is the supreme law of the land.

I say again, Mr. President, that has been the hangup between the White House and me and the State Department and me. They can be cavalier about which laws they obey and execute if they wish. But as long as I am here, they are not going to get by with it.

Thus the pending amendment. I simply propose to encourage the administration to move along and no longer delay in confronting the Soviet Union with their violations of the ABM Treaty. That is all it does.

The violations by the Soviets are far more dangerous to world peace than our procedural violations. I will say again that the failure to abide by that provision of the treaty no doubt falls under the general category of appeasement and compromise, rather than one of deliberate falsification. But either way, it is time for the State Department to get off the dime and comply with the IBM Treaty.

Mr. President, the reason that I called up this amendment is I want the Senators to understand what is going on. I did not draw the amendment to any particular bill but, of course, it could have been offered to any one of several measures and I guess the polygraph legislation may have been the best choice that I made, because the amendment would not be at all amiss in that context, since the question is truth in treaties.

Mr. President, having said all that, and I apologize to the distinguished manager of the bill for taking so much time, I am going to end by withdrawing the amendment.

The PRESIDING OFFICER. The Senator has a right to withdraw the amendment.

Mr. HELMS. I thank the Chair, and I yield the floor.

The PRESIDING OFFICER. The amendment is withdrawn.

Mr. HELMS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. CONRAD). Without objection, it is so ordered.

Mr. BYRD. Mr. President, I hope the Senators who have amendments to the bill will show a disposition to call them up today. Up to this point, I have seen no indication on the part of Senators to call up serious amendments to the bill.

A cloture motion will, of course, be voted on tomorrow. But in the meantime, this is valuable time to spend on the bill.

Mr. President, does the Senator from Indiana have an amendment he wishes to call up at this point?

Mr. QUAYLE. I have a number of amendments concerning the polygraph bill, and if we go ahead on the polygraph bill today, I would probably call up some amendments.

Mr. BYRD. The Senator does not wish to call up one right at this moment?

Mr. QUAYLE. No, I have no desire to call one up right at this moment until we find out what will be the order of business today.

Mr. BYRD. All right. Mr. President, we have spent almost 24 hours—it soon will be, I guess—on this bill.

RECESS

Mr. BYRD. I ask unanimous consent that the Senate stand in recess for 10 minutes to give me an opportunity to talk with the Republican leader.

There being no objection, the Senate, at 12 noon, recessed until 12:10 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer [Mr. CONRAD].

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. BYRD. Mr. President, if the Chair will indulge me momentarily, and protect my rights to the floor.

The PRESIDING OFFICER. The majority leader's rights are protected.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The majority leader.

ligently unless they are received in a timely fashion. These reports include:

(1) The Third Five Year Review report on Soviet ABM Treaty compliance (three and one-half months overdue);

(2) The Arms Control and Disarmament Act Section 52 (Pell Amendment) report on Soviet and U.S. compliance with arms control treaties (one month overdue);

(3) The Arms Control and Disarmament Act Section 37 (Derwinski Amendment) report (months overdue).

It is essential that the GAO be given an opportunity to comment upon the document-shredding before General Burns assumes his post; it is also essential that the three reports be delivered to the Senate in a timely manner.

I want to be cooperative, and if the above matters can be dealt with, confirmation of General Burns can be expedited.

Sincerely,

JESSE HELMS.

THE WHITE HOUSE,
Washington, DC, February 25, 1988.

DEAR SENATOR HELMS: Your letter of February 22 to the President raises several issues in connection with the Senate confirmation of the pending nomination of Major General William F. Burns to be Director of the Arms Control and Disarmament Agency. I am pleased to note that your concerns are not related to General Burns' personal qualifications for the position which, obviously, we both agree are excellent.

With regard to the three reports you addressed, the report required by Section 37 of the Arms Control and Disarmament Act will be forwarded to the Congress not later than March 8. The report on compliance with arms control treaties, the so-called Pell Amendment report, will be submitted to the Congress no later than March 14.

We believe that the third ABM Treaty review should take place consistent with Article XIV of the ABM Treaty. Under that provision, the parties have until October of this year to accomplish such a review. We have informed the Soviet Union that arrangements for the Treaty review, to occur prior to October 1, will be made through diplomatic channels.

With respect to reports of documents being shredded at ACDA that might be related to a GAO review, General Burns has given his personal assurances that, if confirmed, he looks forward to cooperating fully with the GAO and the FBI as they conduct ongoing investigations.

I hope you agree with our judgment that General Burns should be confirmed as soon as possible, so that we may have the benefit of his leadership in dealing with the arms control issues that lie ahead. Your support in expediting General Burns' confirmation would be deeply appreciated.

Sincerely,

COLIN L. POWELL.

POLYGRAPH PROTECTION ACT OF 1987

The Senate continued with consideration of the bill S. 1904.

AMENDMENT NO. 1488

(Purpose: To encourage the United States to end its present violation of the ABM Treaty)

Mr. HELMS. Mr. President, I send to the desk an unprinted amendment and I ask that it be stated.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from North Carolina (Mr. HELMS) proposes an amendment numbered 1488.

Mr. HELMS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

Mr. KENNEDY. Reserving the right to object, I inquire of the Senator from North Carolina if I may have a copy of the amendment.,

Mr. HELMS. That is a fair proposition.

Mr. KENNEDY. I did not get a copy of the amendment.

Mr. HELMS. I assure the Senator will have it in his hands within 10 seconds. I thought it already had been done.

Mr. BYRD. Mr. President, I object. The amendment is a short one. I will object.

Mr. HELMS. No, it is not a short amendment. I am going to explain it.

Mr. BYRD. It is a short one to read. I was just objecting to the calling off of the reading of the amendment.

Mr. HELMS. That is fine. I will be glad to have it read.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

Add at the end of the bill the following new section:

"SEC. . (a) Findings.

(1) The Senate finds that the Treaty Between the United States of America and the Union of Soviet Socialist Republics on the Limitation of Anti-Ballistic Missile Systems, With Associated Protocol, (hereinafter the "ABM Treaty" or the "Treaty") in its Article XIV, Paragraph 2, reads as follows: "Five years after entry into force of this Treaty, and at five-year intervals thereafter, the Parties shall together conduct a review of this Treaty."

(2) The Senate further finds that such Treaty entered into force on October 3, 1972, and that the third five-year anniversary date specified by Article XIV, Paragraph 2, for the conduct of the review contemplated therein was October 3, 1987.

(3) The Senate further finds that, as a fundamental principle of the canons of legal construction, a specified number of years after a specific and determinable date means and can only mean the specified anniversary of such date and not any time during such year as may follow such date.

(4) The Senate finds further that had the Parties to the ABM Treaty intended otherwise then Article XIV, Paragraph 2, of the Treaty would have read "During the fifth year after entry into force of this Treaty," but it does not so read.

(5) The Senate finally finds that the Parties to the Treaty have not met as required by Article XIV, Paragraph 2, because the United States of America refused or neglected to meet on the date required, to wit: October 3, 1987, and that the United States, five months later, still fails or neglects to meet or even to establish a date for meeting.

(b) Taking account of the findings of this Section, it is the sense of the Senate that the United States is violating the ABM Treaty.".

(Mr. HEFLIN assumed the chair.)

Mr. HELMS. Mr. President, now I will explain what you have just heard read by the clerk, although I know the distinguished Chair understands the amendment as it has been read.

A number of months ago, Mr. President, our distinguished colleague from Arkansas, Mr. BUMPERS, alluded in this Chamber to a possible American violation of the ABM Treaty. At that time, I asked the able Senator from Arkansas if he would specify the violation he had in mind. The ensuing discussion on the floor resulted in Senator BUMPERS never identifying the violation and, frankly, I did not pursue the matter. We left it right there.

Now I find myself in the somewhat interesting position of concurring with the view of the Senator from Arkansas, Mr. BUMPERS, that the United States has in fact engaged in a violation of the ABM Treaty. It probably is not the kind of violation that the Senator had in mind, although it may be. I do not know what he had in mind.

In any event, as the amendment states, article XIV, paragraph 2 of the ABM Treaty reads as follows—and the actual text is important, Mr. President. Without understanding what the treaty actually says, some Senators, understandably, might be misled by the glib arguments and obfuscation of the State Department lawyers.

Now the provision that I referred to, article XIV, paragraph 2, reads: "Five years after entry into force of this Treaty, and as 5-year intervals thereafter, the Parties"—and that means the Soviet Union and the United States—"the Parties shall together conduct a review of this Treaty."

That is article XIV, paragraph 2 of the ABM Treaty.

All right. Mr. President, the term "entry into force of this treaty" is a legal specification of a date certain. It does not mean about such-and-such a time. It does not mean we will slip it further down the road a year or 6 months or 30 days. It means what it says.

The joint committee print entitled "Legislation on Foreign Relations" on page 69 states categorically that "The ABM Treaty"—and I am quoting—"entered into force on October 3, 1972." Now, bear that in mind: October 3, 1972. That is when this treaty entered into force.

So it follows, as Sam Ervin used to say, at least to those who are able to read and understand the English language, that "5 years after" October 3, 1972, is obviously October 3, 1977, and that the date of the two succeeding 5-year intervals after that date, October 3, is—guess what?—October 3, 1987, not 1988, unless they have changed arithmetic since I have learned it.

So that is the hangup between the Senator from North Carolina and the White House and the State Department and on down the list. They are trying to say that October—no, they do not even say that. They say the 1st of October of this year. That is not what the treaty says. In other words, they are engaged in an interpretation that is contrary to the plain meaning of the English language used.

MAJ. GEN. WILLIAM BURNS AND ABM TREATY

Mr. HELMS. Mr. President, I thank the Chair.

In further reference to the colloquy between this Senator and the distinguished majority leader concerning the nomination of General Burns, to be Director of the Arms Control and Disarmament Agency, I would like for the record to show that I have been in direct consultation with General Powell and others at the White House about this nomination and about matters related thereto.

Now, General Burns appeared before the Foreign Relations Committee, and I would emphasize that he testified freely and frankly about the problems facing arms control in the near future. General Burns is an able man, and I support his nomination to be head of ACDA.

ACDA, however, Mr. President, has a great deal of other problems which have gone unresolved for far too long, for months on end.

There are three reports long overdue which are of significant importance to this Senate in the consideration of the INF Treaty.

The Senate cannot responsibly proceed to markup and have discussion of the INF Treaty without having the information in these reports, all of which are mandated by law, I might add.

So technically speaking, the law is being violated by the protracted absence of these reports.

Moreover, ACDA is under investigation by both the FBI and the GAO for serious breaches of national security. My office has received detailed information about the shredding and burning of several bags of documents from the offices under investigation.

My discussion with the White House has been to ascertain where the White House stands and to make sure that the White House understands where I stand, because this incident casts a shadow over ACDA's role in the INF negotiations, which I hope General Burns will remedy.

Now, as to the reports which I mentioned, they are as follows:

First is the third 5-year review report on Soviet ABM Treaty compliance which was due last October. The second is the report required under section 52 of the Arms Control and Disarmament Act which we call the Pell amendment report. The required report is on Soviet and United States compliance with arms control treaties, and that report is 1 month overdue already, or more. And the third is a report required by the Arms Control and Disarmament Act, section 37, which we refer to as the Derwinski amendment report and that report was due months ago. But not a peep out of ACDA.

That is what the discussion between this Senator and the White House has been about, and there is going to be a lot of discussion from now on, and an amendment which we will have pending in just a few months will deal with that.

It is time for them to get off the dime. These reports are highly significant, Mr. President.

The third 5-year review must decide whether there have been any material breaches of the ABM Treaty. In my judgment, and in the judgment of many other Senators, the seven reports which the President has sent to Congress show conclusively that there have been material breaches of the ABM Treaty by the Soviet Union. That is no secret around this place. We all know it, whether we acknowledge it or not.

The difference, however, is that the 5-year review must be conducted at the standing consultative committee with the Soviets themselves, and, oh, Mr. President, that is the hangup. There is a tendency among so many down in the State Department not to ruffle any Soviet feathers. Some call it appeasement. Some call it get along, go along.

Well, this is the first time the administration must actually confront the Soviets in an international forum with these material breaches which the President of the United States has reported to us, but not a peep out of the administration. They are too busy encouraging the euphoria about a seriously flawed INF Treaty.

Now, of course, the consequences of such a confrontation have a bearing not only on the INF Treaty, but upon all ongoing negotiations.

The Pell amendment report must certify United States and Soviet compliance with arms control treaties. That is what the amendment which is now law requires. And the Derwinski amendment, as we call it around this place, that report must report on the verification of proposed treaties, including the INF Treaty.

Now, up to this point, in addition to the telephone conversations between General Powell and me and others, I have a letter from General Powell to the effect that the Pell amendment report will be submitted to Congress by March 14 and the Derwinski amendment report by March 8. This is good progress, and I feel that we have made some headway, and I appreciate the cooperation of General Powell and others.

But General Powell's response on the third 5-year review is somewhat less than satisfactory, and I was candid with the general about it. He knows how I feel, and I think I know the spot he is in. But that does not matter. What matters is that compliance was due last October, not this coming October, and there is a great dragging of feet because they do not want to ruffle the feathers of the Soviet Union.

The general, General Powell, stated that he felt the United States has until next October to complete that review, and I will get to it in just a minute, but the United States does not have that luxury. The United States was required to have it last October, not this coming October, and I will get to that in short order.

I told the general we will just have to agree to disagree agreeably, but that he was engaging in a strained interpretation of treaty law which has no legal precedent in an effort to delay the review and the report for more than a year.

I think it makes no sense to proceed with any treaty, including the INF, until this 5-year review is accomplished, but that is the problem. All the warts will be visible in terms of the Soviet Union's duplicity, its violation, its flagrant violations of the ABM Treaty, not to mention all other treaties down the line dating back to 1920.

I have confidence that General Powell and others will act in good faith on this. I have confidence that he will consult their attorneys and ask them what the language means, and I have confidence that their attorneys will tell him, "This was due last October; Senator HELMS was right."

And that is why I mentioned to the majority leader earlier that I personally, as one Senator, hoped that the Senate would proceed to the nomination of General Burns and get this gentleman confirmed.

Mr. President, I ask unanimous consent that my letter to the President, bearing the date of February 22, be printed in the RECORD, followed by the letter from General Powell, dated February 25.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

U.S. SENATE,
COMMITTEE ON FOREIGN RELATIONS,
Washington, DC, February 22, 1988.

The PRESIDENT,
The White House,
Washington, DC.

DEAR MR. PRESIDENT: The nomination of Maj. General William Burns to be Director of the Arms Control and Disarmament Agency is now on the Senate Calendar awaiting action. General Burns testified forthrightly and fully at his nomination hearing and appears to be an excellent nominee.

While I am willing to do anything of a reasonable nature to expedite confirmation of General Burns, I am obliged to state that I am convinced that it would be counterproductive to debate General Burns' nomination at a time when ACDA appears to be in non-compliance with its legal obligations—a situation that clouds the current hearings over the INF Treaty.

I have received reports from witnesses that large quantities of documents were shredded late last week in ACDA offices under investigation by the FBI and GAO. There is an implicit confirmation of these reports in that today an order was issued that no documents should be shredded. I am apprehensive that this order was issued too late.

Moreover, there are three reports mandated by law which are overdue. All three have important bearing on the INF Treaty, and it will be difficult to mark up the treaty intel-

I am trying to learn exactly what was said; because I will say, as one Senator who is somewhat interested in the bill—I can count noses and know where we are going—that there are a number of amendments on this bill that could or could not be called up. Senator HELMS has an amendment.

The majority leader has the floor and has it in his power to move to do whatever he wants to. As one Senator, I would not like him to retain that throughout the day, because then it would not give some of us who may want to raise various issues an opportunity to do so. He has the power to do that, if he wants to; that is his right. At least we would know what the remainder of today is going to be.

I, for one, would not like to see him retain that status throughout the day. If the minority leader does not object, I would object to that status remaining throughout the day, because, it would not allow us, in the minority, to know how we are going to proceed throughout the day, and it would not be in the best interests of this Senator.

I will object, if the minority leader does not, to allowing the status to remain throughout the day.

Mr. SIMPSON. Mr. President, I share with my colleague from Indiana the fact that the majority leader can make that motion now, and we could lose all our status in this process, and the polygraph bill could then disappear and not come up again until we deal with it on cloture.

What I am saying, and I think the majority leader will concur, is that we have three amendments—an amendment by the Senator from North Carolina, one by Mr. COCHRAN, and one by Mr. NICKLES. All those amendments, I assume, will be dealt with, without question, as the majority leader propounds this unanimous-consent request.

We want to make progress on polygraph. We have these three amendments. If there are others, I will immediately communicate them. I know of no other amendments. I know of no dilatory amendments. We are not interested in wrangling. We have serious concerns which I think can be resolved in a procedure that the majority leader and I have discussed, and I have discussed it with my Members.

I think we all should realize that at this point, under the morning hour, we are a bit defenseless as to what could be done.

Mr. QUAYLE. Mr. President, will the majority leader yield for an observation?

Mr. BYRD. Before the Senator responds, may I say that I think the Senator raises a reasonable point. I do not think I should ask to retain this privilege throughout the day. I would be willing to limit it to a couple of hours. I am sure that I will be able to say within a couple of hours where we are going and whether or not Senators are going to be offering serious amendments to the pending business.

All I am asking is that we get the business going and have serious amendments and not engage in extraneous type of amendments.

Mr. QUAYLE. Mr. President, will the Senator yield for an observation?

Mr. BYRD. I yield, without losing my right to the floor.

Mr. QUAYLE. I certainly understand the majority leader wanting to retain his right, whether it be all day or until 3 o'clock, to see what the flow of events is going to be. He certainly can move now.

I would like to establish what the flow of events is going to be as soon as possible, and that means within 2 hours.

If he wants to move the intelligence authorization bill, the majority leader can do so, and I will know that is the pending business. I do not want to prolong what may happen throughout the day, because, depending on whether we go to the intelligence authorization bill or stay on this bill is going to determine what I am going to do.

The minority leader does not know what is going to happen, under the 2-hour rule, and the majority leader has the power, established by precedent, to move to do that. If he makes that decision, the Senator from Indiana will make his decision on what he wants to do. That is why I will object to retaining that status by the majority leader.

I would like to know what we are going to do. I believe we can sit down during this 2-hour timeframe which expires at 12 o'clock. We have 45 minutes to see if we can get an understanding. I do not desire to go beyond that. The majority leader can make his decision, and then we can make our decision.

Mr. BYRD. Mr. President, I am happy that the Senator is ready to make a decision. Yesterday afternoon, I did not see a great inclination on the part of Senators to move this bill along.

I ask unanimous consent that I may retain for 1 hour the status quo insofar as the position I am in vis-a-vis the rules and precedents—1 hour.

The PRESIDING OFFICER. Is there objection to the request?

Mr. SIMPSON. Mr. President, I would like to clarify that. Would it be 1 hour past the hour of 12?

Mr. BYRD. No. One hour from this moment. I have until 12. I am simply asking for an additional 15 minutes. That would give the assistant Republican leader and myself time to have our discussion.

Mr. SIMPSON. Mr. President, I want to clarify another thing. I have assumed, as I have heard the majority leader propound the request, that the leader is not in any way using this arrangement to cut off amendments to the polygraph bill.

Mr. BYRD. No.

Mr. SIMPSON. I think that is important.

I can now share with the majority leader that there is another amendment, by Senator BOSCHWITZ. So there are four amendments to be dealt with. That is important in doing our business.

Perhaps my friend from Indiana has something further to add, but at this point I would not object to the unanimous consent request for 1 hour.

Mr. QUAYLE. Mr. President, reserving the right to object—and I will not object, in deference to the majority leader and the minority leader—it is my understanding that the unanimous consent request is that the 2-hour rule expire not at 12 but at 12:15, which would allow time for discussion. Is that correct?

The PRESIDING OFFICER. That is the understanding of the Chair, that it be until 12:15.

Mr. BYRD. Mr. President, I will make it easier on all Senators, so that this discussion can be brought to a close.

I ask unanimous consent that I be recognized at the hour of 12 noon and at that time my rights will continue as they are, or I can hold the floor until then, or I can move now.

Mr. QUAYLE. Reserving the right to object on the first unanimous consent request——

The PRESIDING OFFICER. The Senator from Indiana.

Mr. QUAYLE. With respect to objecting to that, in deference to the majority leader and the minority leader, extending it 15 minutes, I will not object. But I will put the Senate on notice that if there are further requests to extend that, I will be constrained to object, so that we will know what the order of business will be by 12:15.

Mr. BYRD. I thank the Senator.

The PRESIDING OFFICER. Has the majority leader withdrawn the first request or is it still pending?

Mr. BYRD. I guess I would withdraw the second request.

The PRESIDING OFFICER. The second request is withdrawn. The first request, which was unanimous consent to extend the period until 12:15—is that request to be propounded by the majority leader?

Mr. BYRD. That is the request.

The PRESIDING OFFICER. Is there objection?

Mr. BYRD. I will also ask unanimous consent to be recognized at 12:15.

The PRESIDING OFFICER. Is there objection to the two requests of the majority leader: that the time be extended to 12:15 and that the majority leader be entitled to recognition at 12:15? The Chair hears none, and it is so ordered.

Mr. BYRD. Mr. President, I thank all Senators. I yield the floor.

The PRESIDING OFFICER. The Senator yields the floor.

The Senator from North Carolina.

Mr. SIMPSON. Mr. President, would the majority leader yield?

Mr. BYRD. Yes.

Mr. SIMPSON. Mr. President, I realize that the procedures now could go forward on the nondebatable motion and the majority leader could go with what he wishes to go on, too. I would respectfully suggest that if he would withhold, I think I have about two Members here that I think consent could come from a little later in the day. I really do believe that. But after I visit with the leader about the other proposal, there may be some material to deal with on the floor today. I can visit with him in his chambers after that.

Mr. BYRD. I certainly thank the distinguished Senator. I want to work with him.

Mr. BOREN. Will the leader yield?

Mr. BYRD. I hope that the Senate can make progress on the pending bill today, but I would not want to waste today. Much of yesterday afternoon was wasted because we only have 2 days left this week, and I hope we can complete action on the pending business and on the intelligence authorization bill. The chairman of the Intelligence Committee has indicated to me on yesterday that he and Senator COHEN would be ready at any time after yesterday to proceed to that bill.

So what I am trying to do, let me say once again for the RECORD, is put the Senate in the position where it can complete action on both those measures and be ready to go to Price-Anderson by the time the Senate goes out for the recess.

Yes, I yield.

Mr. BOREN. I thank the leader.

I just want to state again that I believe—and I talked with Senator COHEN about this yesterday, and I talked with interested Senators on this matter; the intelligence oversight bill which was a committee product with strong majority on both sides of the aisle in favor of that bill, came out of committee by almost a unanimous vote—we are prepared as well to endeavor to be ready at any point that the leader wishes to proceed to that.

So we will be prepared and ready if the leader decides to move forward on that legislation. I do not anticipate very many amendments in terms of volume that would delay consideration of that bill because it has been a matter that we have worked on in our committee for many, many scores and scores of hours.

Mr. BYRD. I thank the distinguished Senator, my friend, the chairman of the Intelligence Committee.

Mr. HELMS. Mr. President, would the Senator yield without of course losing his right to the floor?

Mr. BYRD. Yes.

Mr. HELMS. May I inquire of the distinguished majority leader and the Republican leader if there are plans to proceed today with the General Burns nomination to the U.S Arms Control and Disarmanent Agency. I think that we should proceed unless there is some reason to not proceed. I do want to make a statement in that connection. But I have had repeated contact with the White House about this and other matters, and we have resolved all except one point which is not minor but I do not think we ought to delay the nomination of General Burns.

Mr. BYRD. Mr. President, may I say that Secretary Shultz spoke to me about this nomination last week, and I do hope——

Mr. HELMS. Mr. President, I cannot hear the majority leader as near as I am to him.

The PRESIDING OFFICER. The Senators will suspend. The Senate will be in order. Those Senators and others conversing will please take their seats or retire to the cloakroom.

Mr. HELMS. I thank the Chair.

The PRESIDING OFFICER. The Senator from North Carolina addressed a question to the majority leader.

Mr. BYRD. Mr. President, I hope we can go to this nomination at some point today or certainly before the week is out. Secretary Shultz spoke to me about the nomination last week, and I would be very happy to proceed on that matter at any time, if we can get clearance on it. Otherwise, we could move to it and dispose of that, hopefully, before the recess.

I would like to add that to the list of items that I hope we can get done before the close of business on Friday.

Mr. HELMS. Very well. I thank the leader.

Mr. BYRD. Mr. President, I had heard some rumor to the effect that inasmuch as we have offered a cloture motion on the pending business, and that cloture vote will not occur until tomorrow, a good bit of today might be spent in wrangling over the rules. I do not know whether there is any substance to that rumor or not. But I am not interested in spending today wrangling over old bones. What I would like to do is get on with today's business and the authorization for intelligence.

It is for that reason that I am asking now, and I ask unanimous consent because I want to have the opportunity to talk with the distinguished leader on the other side of the aisle, that I may yield the floor at this time, retaining throughout the day the position that I maintain as of this moment; namely, the ability to move to make a motion to proceed to another matter on the Calendar of Business, that motion being nondebatable as of now and for the next 53 minutes. Also, at this moment, not only could I move to do that, which would temporarily displace, if that motion carried, the pending business, but I would be in a position once the intelligence authorization bill was before the Senate to offer a cloture motion on it, and then I would have at this moment time remaining to move back to the pending business, and that again would be a nondebatable motion.

So I ask unanimous consent that I may yield the floor, and that the status quo situation in these respects may be continued until such time as later in the day I could either take whatever action may appear to be the best at that time, or I waive the status quo. This would allow me to have these conversations with the distinguished leader on the other side. He would lose nothing, and nobody would, because I am in a position now of holding the floor to move. Actually nobody loses any rights under this matter. I would simply retain the rights that I have at this moment as the leader to act in the interests as I see of the Senate in moving forward on these two measures this week, plus the nomination.

I yield, Mr. President, to the distinguished acting leader.

Mr. SIMPSON. Mr. President, that has been proposed as a unanimous-consent request. Reserving the right to object, and I just want to have it clearly said that the leader could do all of those things right now that he has discussed doing later.

I think that is important for our people to realize that he could go to the nondebatable motion, the intelligence authorization, and I do not think we will have a bit of problem getting to that later today. I have one person that has indicated some concern, and I think that will fall away and we can go to it from what I understand.

So I just want it to be certain that we all see that what he is doing by this unanimous consent is simply preserving his procedural advantage of the moment which if we did not concur with the unanimous-consent agreement he could go ahead and do anyway. I think that is important. I believe we can do some business today, and we will be in a position to do that. I think that after we have a visit with the majority leader in his office, we will know a great deal more about the progress of the day.

At this point, I am well aware as to what the majority leader could do at this moment. By agreeing to this unanimous-consent request, it will accommodate that other Member, and we can go forward and allow the majority leader to preserve his position of the moment.

I believe others may wish to speak.

Mr. QUAYLE. Mr. President, will the Senator yield?

Mr. BYRD. I yield, without losing my right to the floor, to Mr. QUAYLE.

First, let me thank the acting Republican leader.

Mr. QUAYLE. Did I correctly understand the Republican leader to say that he did not think that he would raise an objection to the majority leader's request that he be in the same position later on? I had a difficult time hearing back here, with the noise.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 67, nays 27, as follows:

[Rollcall Vote No. 34 Leg.]

YEAS—67

Adams	Glenn	Pell
Baucus	Graham	Pressler
Bentsen	Grassley	Proxmire
Bingaman	Harkin	Pryor
Boren	Hatfield	Reid
Boschwitz	Heflin	Riegle
Bradley	Hollings	Rockefeller
Breaux	Humphrey	Roth
Bumpers	Inouye	Rudman
Burdick	Johnston	Sanford
Byrd	Karnes	Sarbanes
Chiles	Kassebaum	Sasser
Cranston	Kennedy	Shelby
Danforth	Lautenberg	Simpson
Daschle	Leahy	Stafford
DeConcini	Levin	Stennis
Dixon	McClure	Stevens
Dodd	Melcher	Thurmond
Domenici	Metzenbaum	Trible
Durenberger	Mikulski	Warner
Exon	Mitchell	Wirth
Ford	Moynihan	
Fowler	Nunn	

NAYS—27

Armstrong	Gramm	Murkowski
Bond	Hatch	Nickles
Chafee	Hecht	Packwood
Cochran	Heinz	Quayle
Cohen	Helms	Specter
Conrad	Kasten	Symms
D'Amato	Lugar	Wallop
Evans	McCain	Weicker
Garn	McConnell	Wilson

NOT VOTING—6

Biden	Gore	Matsunaga
Dole	Kerry	Simon

So the motion was agreed to.

The PRESIDING OFFICER. A quorum is present.

Mr. HELMS. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BYRD. Mr. President, I hope that Senators are ready to proceed with amendments on this bill.

May I inquire if there are Senators on the floor who have amendments that they intend to call up?

Mr. HELMS. I have one.

Mr. BYRD. Mr. HELMS has one.

Are there other amendments that will be called up?

The PRESIDING OFFICER. The Senate will be in order. The majority leader is requesting that Members who wish to offer amendments please indicate at this time their intention.

The Senator from North Carolina. The Senator from Wyoming.

The majority leader.

Mr. BYRD. I yield to the distinguished Senator from Wyoming, the acting Republican leader; and ask unanimous consent that I might retain my right to the floor.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Wyoming, under the unanimous-consent request, is recognized.

Mr. SIMPSON. Mr. President, the majority leader has asked about amendments on this side of the aisle. We have at least two of which I can inform the majority leader, an amendment of Senator COCHRAN and Senator NICKLES. So I can assure the majority leader that there are two amendments—three amendments, and the Senator from North Carolina. So we have three amendments here to show the majority leader we are anxious to do the business required.

Mr. BYRD. I thank the distinguished leader on the other side of the aisle.

There will be a cloture vote on this measure tomorrow if it is not disposed of today.

On yesterday, I introduced a cloture motion; there was not an inclination at that time to call up amendments. Now, I hope that we could finish this bill today and thus vitiate the cloture vote for tomorrow. I also hope that we could take up the intelligence authorization bill. We only have today, Thursday, and a full day on Friday, and I would like to at least finish these two bills and take up the Price-Anderson legislation so that when the Senate returns from the break, the Senate will be on the Price-Anderson legislation.

Now, I have indicated what I would hope to do, and I welcome any suggestions on the part of Senators that would help me to do what I have said I think the Senate needs to do.

Mr. JOHNSTON. Mr. President, will the leader yield?

Mr. BYRD. Yes. First, let me ask if the distinguished acting leader has any suggestion or proposal that he would make at this time to assist the Senate in moving on that schedule accordingly, if it can be done.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. SIMPSON. Mr. President, I would inform the majority leader that I think the aspect of the cloture vote does impel us to do our work, and we are going to do that. I think it would be good if the majority leader and I visited about what we visited about last night. I think perhaps we might be in a position to utilize the services of the new committee, the ad hoc committee, for the referral of a sense-of-the-Senate resolution which could be discussed today, and I would like to visit with the majority leader about that. We have been asked to appoint one new member. I am ready to do that. That group would then deal with the rules issues that we discussed. Then we could go to a double track for the intelligence authorization and then get to Price-Anderson and be dealing with it and have it as the pending item of business when we return, because it is a very important piece of legislation.

I think the scenario is appropriate, and I would respectfully suggest that, as Senator HELMS goes forward, the majority leader and I visit, and I think we can put this week's package together.

Mr. BYRD. Very well. If the Senator will allow me to yield to Mr. JOHNSTON first.

Mr. SIMPSON. Indeed.

The PRESIDING OFFICER. The majority leader.

Mr. BYRD. I yield, with the understanding I retain my right to the floor, to the Senator from Louisiana.

Mr. JOHNSTON. Mr. President, I thank the leader for yielding.

As the leader knows, I am most anxious to bring up the Price-Anderson legislation, with only one caveat, and that is on Monday after the recess, our new Governor is being inaugurated, and our delegation wanted to be there and fly back that afternoon. There may be other aspects of the legislation which could be considered other than those that I am involved in that morning, but I would not be available that morning unless there was no other way to do it, in which event I will probably cancel attendance at the inauguration, but I hate to do that.

Mr. BYRD. Yes. I fully appreciate the Senator's situation and will be governed accordingly.

Mr. President, I wonder if I might make this proposal. In order to expedite, if I can, action on both this measure, which is before the Senate, and the intelligence authorization measure, and get action completed on those two bills this week and hopefully get into a position of taking up Price-Anderson for action following the recess, I wonder if Senators would give me consent that I might be able to maintain the status quo position vis-a-vis the rules until later in the day, at such time as we may be able to give me consent to take up the intelligence authorization bill.

What I am saying is I think now, so that Senators may understand, I am in position at this moment to move to take up the intelligence authorization bill. That would not require unanimous consent. That would be a nondebatable motion at this moment and will be for the next hour. I do not want to do that if I can get consent to take it up at any time today. I prefer that. But what I would like to do otherwise is move to take that up and have a vote on it. Of course, that vote would displace the pending business until tomorrow, at which time the cloture vote would occur and the Senate could vote for cloture on the pending business.

I would like to proceed today either with the intelligence authorization matter or the pending business. But in any event, this would be one way of utilizing today not in a way that the Senate would be spinning its wheels. And with only Thursday and Friday left after today, unless today can be utilized beneficially and to the extent of making progress on both these measures, I am concerned that we may go out Friday without finishing action on one or both of these measures.

it I guess, they said use common sense and that is what I did. After a while the money got better. The people of Montpelier were very good to me. I had gone to school with many of them and I think it helped that they knew me.

"We used to work 11 hour shifts and every 15th day we got a day off. The men on the day shift got $27.50 a month but some of us worked special assignment and we were paid better. We got $1.25 a day. I didn't have any schooling for the job, but a local banker took me under his wing and talked to me a lot about common sense. I think I used it pretty good. One time I almost messed up.

"I was standing on the corner and a car came around wobbling back and forth," he says. "I stopped the car and had the driver get out. He was staggering all over the place so I took him down to jail. The next morning when I went to get him out, he was still staggering. I asked him if he was sick or something and he said no. He had two artificial legs! I told his wife right away, I would go talk to the judge and get it straightened out but she said no. She said he had been drinking heavily and they both felt he deserved what had happened. They had a pretty good sized boy with them and he drove home.

"Back then you didn't get arrested for intoxication unless you broke the peace. It was a serious offense to have on your record and it could keep you from getting a job. So unless you were making a lot of trouble, you didn't get arrested. We didn't have cars on the force then and I've carried quite a few men home on my back. I could always tell the drifters would make trouble when they were drinking. They wanted to go to jail where it was warm and dry and where they would get food. For the first offense it was 10 days in jail, for the second it was 30 days, and for the third it was six months in Windsor State Prison. I always thought those men were better off because they would be in long enough to get dried out."

In 1922, George married Lillian Holmes, whom he found out later, he had gone to kindergarten with. Lillian's father was from Maine and as a child she moved there while her father worked as a carpenter building houses. When the family got homesick they returned to Vermont. Later Lillian, who had two sisters, moved to Massachusetts with a married sister and worked in an office job for a time. The money was very good but she soon got homesick and returned to Vermont. George met her again at a dance and, thinking they "were fully grown," they soon married. They raised a son and daughter and were married for 64 years.

"Lillian was very handy, "George says fondly. "She worked in a store some and she could make any kind of clothing and people would think it has come from the store. Back then, she had to wear uniforms made of 16-ounce serge. They were double-breasted with a military color. They were brutal in the summer. One night, she didn't say anything to me but she moved all the buttons, opened up the neck and let the whole thing out. I didn't know if it would make trouble or not but I wore it to work. The chief took one look at it and said, 'That looks good.' He got permission to order open-collar, single-breasted coats. I'm sure we were the first in the state of Vermont to wear open collars. Later we even went to shirt sleeves in the summer."

George's children both live in California and he has flown out to spend time with each of them. He now has six grandchildren and 12 great-grandchildren. He feels he has been blessed with a healthy and fortunate life. He never has been very sick except for the time as a child when he broke some ribs in a sleighing accident and the time a year ago when he fell and broke a couple more. He spends three days a week at the Montpelier Senior Center where he socializes and plays some serious pool. George thinks his good health is due to all of the exercise he gets and a very slow heart rate. His hobbies are hunting and fishing and although he couldn't pursue either this year, he plans to next. He is concerned about the obvious effort of acid rain on the streams and ponds and isn't sure where he might find fish next summer but intends to look for them.

NORIEGA HAS TO GO

Mr. LEAHY. Mr. President, I come to the floor on a very serious matter this morning.

Mr. President, I would like to take a look at a few facts about the turmoil in Panama.

Panama is the main transshipment point for cocaine from Colombia coming into the United States. It is also the world banking center for laundering billions of dollars of drug money that comes from the poisoning of the youth of the United States.

Gen. Manuel Noriega and his cronies have institutionalized corruption, putting Panama's military services, banks and even airfields at the service of drug traffickers. It is nothing less than the prostitution of an entire country.

And their payoff? Kickbacks in the hundreds of million of dollars going into Swiss bank accounts and French villas.

Yesterday, President Reagan signed an order penalizing Panama for failing to cooperate effectively in the fight against the drug trade.

The United States Government gave Panama every chance—in fact, too, many chances for too many years a lot of us would say—to throw out its corrupt officers and officials. We waited and waited for Panama to find its national honor and get rid of this common criminal, Manuel Noriega.

I welcome President Reagan's action yesterday. But I am deeply concerned that he gave Noriega such a light tap in terms of real pressures on the Panamanian economy.

The President stopped short of imposing the maximum penalties allowed under the law. In fact, the sanctions he imposed—cutoff of Panama's sugar quota and a 50-percent cut in United States aid—fall short of actions that we here in Congress had already legislated.

Congress had directed that United States directors on international banks vote against loans to Panama. We ordered all economic and military assistance terminated, not just cut in half, but terminated, cut off entirely. We stopped the importation of Panamanian sugar. And, we barred any funding of joint military exercises with the Panamanian military.

Congress did this last year.

The President drew back from applying full trade sanctions, even though the law gave him the authority to do so. He apparently was not willing to be as tough as Congress already had been.

It was as if he found Noriega guilty of murder and then let him off with probation.

This is not a time to pull punches.

It is ironic that a President who declared war on drugs now refuses to use his power to punish a murderous military dictatorship that made its country the hub of the South American drug trade.

It is doubly ironic that this decision comes just days after General Noriega refused dismissal by the constitutional President, Eric Delvalle, after he staged a coup to oust the legitimate government and after he was indicted by two U.S. grand juries on Federal drug and racketeering charges.

Mr. President, this administration talks tough on drugs until it is time to start being tough. Then it acts like its hands are tied. It is delighted to impose a complete trade embargo against Nicaragua and spend half a billion dollars of the taxpayers' money to overthrow the Sandinistas.

But it cannot bring itself to institute even partial trade sanctions against a vicious military dictator who poses a far greater threat to this country than bankrupt Nicaragua.

Drugs are pouring into this country from South America through Panama and Mexico. Efforts to eradicate cocaine at the source have failed. Drugs are killing thousands of young Americans every year.

And what does the President say? That we have "turned the corner" on drugs. He seems to believe the "just say no" campaign is actually working—when all the evidence is that we are in the middle of a nationwide drug epidemic.

Remember that it was a courageous U.S. attorney in Florida who indicted Noriega on drug trafficking, not the Drug Enforcement Agency which cozied up to him for years.

And it was our colleagues, Senators KERRY and D'AMATO, who held the hearings that tore the veil off the drug dealing by Noriega and his henchmen, not an administration that turned a blind eye until it could no longer be ignored.

The Latin drug trade—not the ragtag Sandinistas—is the most serious threat we face in our own hemisphere. There is no better place to demonstrate our resolve than to destroy the drug empire that is strangling Panama.

The fight against drugs goes hand-in-hand with the fight for democracy in Panama. Last summer, thousands of Panamanians took to the streets and called for an end to oppression, an end to crime and corruption, and a return to democracy and the rule of law. They have had enough of seeing their country raped and pillaged by drug kingpins and power-crazed colonels.

The United States shares the blame for this crisis. Until the evidence for

his corruption just became overwhelming, this administration was more interested in Noriega's support for the Contras through Oliver North than his subversion of democracy in Panama.

The White House cannot have it both ways. It cannot claim it is carrying on a war against drugs while softpedaling the thugs in Panama who funnel the drugs into our schools and our streets.

How can anyone argue against imposing the strongest sanctions possible? President Eric Arturo Delvalle, still in hiding in Panama, has called on the United States and the world's democracies to levy tough sanctions on Panama as long as Noriega stays.

General Noriega himself may be beyond pressure. But the colonels who keep him in power are not. We can show them just how painful things can get as long as Noriega is in power.

Sixty percent of Panama's exports come to the United States. The President has the power to impose a 50-percent tax on those exports, to cut off preferential tariffs, and bar airline flights between Panama and the United States.

The President could order an immediate cutoff of short-term loans by United States banks or other financial institutions to the government or Panamanian banks. This would have an obvious and severe impact on Panamanian financial activity very quickly without harming United States banks unduly. Our banks are rapidly backing away from making these short-term loans to Panama anyway, and we would accelerate a process already underway.

Even more draconian financial sanctions are possible, though we need to do more study to determine their impact before we make decisions. We do not want to harm ourselves more than Noriega or the power brokers who back him.

Ultimately, if the colonels in Panama will not force Noriega to go quietly, the President could even impose a complete economic embargo—just as he has done against Nicaragua.

Mr. President, I want to make a final point.

Some political leaders, including, I am sorry to say, senior Members of this body from the other side of the aisle, have started talking about the United States abrogating the Panama Canal treaties.

This is irresponsible, and plays right into the hands of Noriega and his gang. They are claiming that this is nothing more than a plot by the United States to get out of the treaties and take over the Canal Zone again. They are trying to pose as the nationalist defenders of Panama's sovereignty over the canal.

I urge all Senators and indeed all responsible Americans to stop such talk. The treaties are permanent. We are not going to tear them up and go back to a dead past. The days when the United States could own a strip right through the center of another country are gone forever.

Let us all join together for the common goal—kick out Noriega, restore democracy to Panama, and save our children from the drug empire.

You know, Mr. President, I spent 8½ years as a prosecutor. I know that if you want real law enforcement, you do not talk tough, you have to act tough. We cannot stop drug traffic in this country by just asking everybody to stand up and say, "Just say no." It has not worked in the past. It is not working now. It is not going to work in the future.

Let us stop it at the source. The quickest way to do that is to stop General Noriega.

Mr. President, I yield the floor.

Mr. BYRD. Mr. President, has morning business closed?

The ACTING PRESIDENT pro tempore. The Chair will respond that morning business is now closed.

Mr. BYRD. I understand Senator KARNES wishes to speak in morning business.

Mr. KARNES. Yes.

The ACTING PRESIDENT pro tempore. The Chair will recognize the Senator from Nebraska. Does he seek unanimous consent to extend the time for morning business?

Mr. BYRD. No. I would object to that.

How much morning business time remains?

The ACTING PRESIDENT pro tempore. The Chair would advise the Senator we have 30 seconds left for morning business.

Mr. BYRD. I do not want business to extend beyond 10:30.

The ACTING PRESIDENT pro tempore. That request has not been made. Morning business was extended for 10 minutes.

Mr. BYRD. I stand corrected.

ORDER EXTENDING MORNING BUSINESS FOR 5 MINUTES

Mr. BYRD. Mr. President, I ask unanimous consent that morning business be extended for 5 minutes.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The Chair recognizes the Senator from Nebraska, Senator KARNES.

Mr. KARNES. Mr. President, I thank the leader very much for that accommodation. I appreciate that very much.

(The remarks of Mr. KARNES will appear later in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

CONCLUSION OF MORNING BUSINESS

Mr. BYRD. Mr. President, is morning business closed?

The ACTING PRESIDENT pro tempore. We have 1 minute remaining under the unanimous-consent agreement.

Mr. BYRD. I ask unanimous consent morning business be closed.

The ACTING PRESIDENT pro tempore. Morning business is closed.

POLYGRAPH PROTECTION ACT OF 1987

Mr. BYRD. Mr. President, I ask that the pending business be laid before the Senate.

The ACTING PRESIDENT pro tempore. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 1904) to strictly limit the use of lie detector examinations by employers involved in or affecting interestate commerce.

The Senate resumed consideration of the bill.

QUORUM CALL

Mr. BYRD. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The absence of a quorum will be noted.

Mr. BYRD. It will be a live quorum, Mr. President. As I indicated on yesterday there will be a rollcall requesting the Sergeant at Arms.

The ACTING PRESIDENT pro tempore. The clerk will call the roll to ascertain the presence of a quorum.

The legislative clerk called the roll and the following Senators entered the Chamber and answered to their names:

[Quorum No. 12]

Adams	Ford	Wallop
Breaux	Karnes	Warner
Byrd	Leahy	Wirth

The PRESIDING OFFICER (Mr. ADAMS). A quorum is not present. The clerk will call the names of the absent Senators.

Mr. BYRD. Mr. President, I move the Sergeant at Arms be instructed to request the presence of absent Senators. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Tennessee [Mr. GORE], the Senator from Massachusetts [Mr. KERRY], the Senator from Hawaii [Mr. MATSUNAGA], and the Senator from Illinois [Mr. SIMON] are necessarily absent.

I also announce that the Senator from Delaware [Mr. BIDEN] is absent because of illness.

Mr. SIMPSON. I announce that the the Senator from Kansas [Mr. DOLE] is necessarily absent.

of the points in support of the INF Treaty that I have made in this speech. They also make one additional and specially impressive point. They call attention to the virtually unanimous support of the INF Treaty by the European leaders in NATO. Here, Mr. President, are the countries that are literally on the firing line. If the NATO military alliance were weakened and NATO was unable to withstand a pact attack these are the countries that would suffer. Many of their people would lose their lives. All of them would lose their freedom. The leaders of these countries know the INF Treaty makes NATO stronger. This is why, Mr. President, the Senate should promptly ratify it.

Mr. President, I ask unanimous consent that the editorial to which I have just referred be printed in the RECORD.

There being no objection, the editorial ordered to be printed in the RECORD, as follows:

THE TREATY, EUROPEANS AND THE JITTERS

What does Europe think of the treaty to eliminate Euromissiles? The answer, as the Senate weighs ratification, is clear: Virtually all West European leaders support the treaty. Some Americans say that behind the official blessings lie deep divisions and doubts. But they confuse genuine support for this treaty and equally genuine concern about the state of the alliance. Failure to ratify the treaty would only deepen those concerns.

European leaders support the I.N.F. agreement because it would leave NATO stronger, not because somebody's twisting their arms. It would eliminate a class of weapons threatening to Europe in which the Russians hold a clear superority. It is the first arms accord dealing directly with European security. Not least, it holds the door open for further diplomatic opportunities with Mikhail Gorbachev's Soviet Union. That's strongly desired by Europeans from far left to far right.

Still, Americans who insist they know the real European mind ignite charge after charge. They contend that the treaty weakens deterrence. But why? More than 300,000 American troops remain in place. So do 90 percent of U.S. nuclear weapons in Europe—4,000 warheads on various delivery systems, including bombers that can reach Soviet territory.

The critics see it all leading to a denuclearized Europe, leaving Moscow with a threatening superiority in conventional forces. But European leaders are well aware that deterrence still requires nuclear weapons on their territories and they won't be suckered into that game by Moscow. The critics maintain that the treaty will make Europe safe for conventional war. How will eliminating Soviet advantages in missiles with ranges between 300 and 3,000 miles do that? They say it will neutralize Bonn. Did Bonn feel safer when Moscow had the edge in mid-range missiles?

Reagan Administration policies have undermined European confidence in America. In its early years, the Administration unsettled Europe with talk of the possibility of limited nuclear war. Then it undercut the doctrine of nuclear deterrence with talk of rendering nuclear weapons impotent with a space shield over the U.S., not Europe. Then in Reykjavik, President Reagan proposed eliminating all ballistic missiles, having breathed nary a word of that remarkable idea to his allies.

Little wonder that many Europeans worry loudly about American thinking and the balance of strategic and conventional forces. The treaty may give a focus to this fretting. But it did not create the worries nor does it exacerbate the underlying problems. On the contrary, it strengthens the alliance militarily and demonstrates its political strength. In the face of dire Soviet threats, Europeans went ahead with deployment of the U.S. Euromissiles, and through the alliance's steadiness, brought about the agreement to destroy all such missiles.

The Senate will serve both the alliance and the ratification process best by doing what the treaty's critics fail to do: take the treaty on its merits—and the Europeans at their word.

POLYGRAPH PROTECTION ACT

Mr. SPECTER. Mr. President, although I strongly support this bill, I am voting against cloture at this time because I strongly believe such a procedure establishes an attitude of undue rush to judgment by the Senate.

This bill was called for floor action 2 days ago on the afternoon of Tuesday, March 1. The bill was considered by the Senate for only a few hours that afternoon and a cloture motion was filed the same afternoon without any indication of a filibuster or extensive debate.

Extended discussion is unnecessary to emphasize the importance of debate, appropriate consideration and the Senate's deliberative process. That does not occur when a cloture motion is filed virtually contemporaneously with a bill's reaching the Senate floor.

Yesterday, on March 2, amendments were considered with a 10-minute time limitation so that each side had 5 minutes for the presentation of arguments. That rush-atmosphere is hardly conducive to appropriate consideration.

An amendment was considered yesterday on their bill expressing the sense of the Senate to oppose a $400 million loan from the World Bank to Mexico to establish a steel industry. Debate on that important matter was limited to 15 minutes, slowing the prevailing attitude that the Senate should rush to judgment on such important matters. That procedure, in my judgment, is most unwise and the Senate should take the time which it needs to give appropriate consideration to such issues.

Accordingly, I believe that it is unwise to establish a practice for premature resort to cloture. The Senate has ample time to consider these matters.

On Monday last, 6 hours of debate were set on a resolution which, most agreed, did not require that much time. In any event, the 6 hours were not used.

There is ample time during the course of the workday for the Senate to be in session to give appropriate time to consider issues like the pending bill and the World Bank loan. Accordingly, while I strongly support the pending substantive legislation, I am equally strongly opposed to this cloture practice and believe the Senate should reject it.

ORDER OF PROCEDURE

Mr. BYRD. Mr. President, I simply take a moment to remind all offices that the rollcall vote on the motion to invoke cloture will begin at 9:30 a.m., some 5 minutes from now. That will be a 30-minute rollcall vote and the call for the regular order will be automatic at the conclusion of the 30 minutes.

So if there are any offices that are listening and I am sure there are, I suggest that they make preparations for reminding all Senators that the vote is rapidly approaching.

Mr. President, I yield the floor.

CONCLUSION OF MORNING BUSINESS

Mr. BYRD. Mr. President, I ask that morning business be closed.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. BYRD. Mr. President, the mandatory quorum was waived. So I will not suggest the absence of a quorum. Morning business has been closed.

The ACTING PRESIDENT pro tempore. The majority leader is correct.

Mr. BYRD. Very well.

Mr. President, I suggest what I intend to be a short quorum, and if no Senator objects to the calling off of this quorum, it will be a short quorum. I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

POLYGRAPH PROTECTION ACT OF 1987

The ACTING PRESIDENT pro tempore. Under the previous order the hour of 9:30 o'clock a.m. having arrived the clerk will report the motion to invoke cloture.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators in accordance with the provisions of Rule XXII of the Standing Rules of the Senate hereby move to bring to a close the debate upon the committee substitute to the bill S. 1904, Polygraph Protection Act of 1987.

Senators Edward M. Kennedy, Howard Metzenbaum, Brock Adams, Lowell Weicker, Patrick Leahy, John F. Kerry, Tom Harkin, Thomas Daschle, Orrin G. Hatch, Don Riegle, Christopher Dodd, Barbara A. Mikulski, Timothy E. Wirth, J.J. Exon, Dale Bumpers, and Robert Stafford.

VOTE

The ACTING PRESIDENT pro tempore. By unanimous consent the quorum call has been waived.

The question is, Is it the sense of the Senate that debate on the committee substitute to S. 1904, the Polygraph Protection Act of 1987, shall be brought to a close? The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Tennessee [Mr. GORE] and the Senator from Illinois [Mr. SIMON] are necessarily absent.

I also announce that the Senator from Delaware [Mr. BIDEN] is absent because of illness.

Mr. SIMPSON. I announce that the Senator from Kansas [Mr. DOLE] is necessarily absent.

The PRESIDING OFFICER (Mr. DIXON). Are there any other Senators in the Chamber who desire to vote?

The yeas and nays resulted—yeas 77, nays 19, as follows:

[Rollcall Vote No. 42 Leg.]

YEAS—77

Adams	Evans	Metzenbaum
Armstrong	Exon	Mikulski
Baucus	Ford	Mitchell
Bentsen	Fowler	Moynihan
Bingaman	Glenn	Murkowski
Bond	Graham	Nunn
Boren	Grassley	Packwood
Boschwitz	Harkin	Pell
Bradley	Hatch	Proxmire
Breaux	Hatfield	Pryor
Bumpers	Heflin	Reid
Burdick	Heinz	Riegle
Byrd	Hollings	Rockefeller
Chafee	Humphrey	Roth
Chiles	Inouye	Rudman
Cohen	Johnston	Sanford
Conrad	Kassebaum	Sarbanes
Cranston	Kasten	Sasser
D'Amato	Kennedy	Shelby
Danforth	Kerry	Simpson
Daschle	Lautenberg	Stafford
DeConcini	Leahy	Stennis
Dixon	Levin	Weicker
Dodd	Lugar	Wilson
Domenici	Matsunaga	Wirth
Durenberger	Melcher	

NAYS—19

Cochran	McClure	Symms
Garn	McConnell	Thurmond
Gramm	Nickles	Trible
Hecht	Pressler	Wallop
Helms	Quayle	Warner
Karnes	Specter	
McCain	Stevens	

NOT VOTING—4

Biden	Gore
Dole	Simon

The PRESIDING OFFICER. On this vote, the yeas are 77 and the nays are 19. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

POLYGRAPH PROTECTION ACT OF 1987

The Senate continued with the consideration of the bill S. 1904.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. BYRD. Mr. President, may I ask a question of the distinguished acting Republican leader? Included in the order last evening was a provision to allow for up to three amendments to be called up from the other side of the aisle. What are the prospects, may I ask of the distinguished acting Republican leader, on that matter?

Mr. SIMPSON. Mr. President, I would advise the majority leader that the Senator from Texas has indicated to me that he would not be presenting those amendments. He will withdraw those amendments. Perhaps the Senator from Texas wishes to comment upon that.

Mr. BYRD. I yield.

Mr. GRAMM. If the distinguished majority leader would yield.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, I had a discussion this morning with the distinguished Senator from Massachusetts, a discussion dealing with the area of the pharmaceutical industries. He gave me assurances that would be dealt with, and based on that, we are not offering additional amendments.

Mr. BYRD. I thank all Senators. I ask unanimous consent that no further amendments now be in order, which would leave the debate time in position for Senators to speak on the matter. I believe it is 40 minutes equally divided.

Mr. SIMPSON. That is correct.

Mr. BYRD. I thank the acting Republican leader, and I thank all Senators, particularly the Senator from Texas [Mr. GRAMM] and the Senator from Massachusetts [Mr. KENNEDY].

Mr. KENNEDY. Mr. President, I know the Senator from Utah wants to speak on this bill. We just had a vote. We will be glad to do whatever the leadership wants, as long as we wind up the consideration, have third reading, and have the vote after that. I imagine that will be in a short period of time.

Mr. BYRD. Very well. Mr. President, shall we count on the full use of the 40 minutes?

Mr. KENNEDY. Mr. President, I think it will be less. I plan to speak just briefly, 4 or 5 minutes. The Senator from Utah wants to speak for 4 or 5 minutes. He is at the Judiciary Committee now, and he wanted to be notified.

I do not believe anyone has contacted us on our side. I think most of those who wanted to speak have spoken.

Mr. SIMPSON addressed the Chair.

The PRESIDING OFFICER. The acting Republican leader.

Mr. SIMPSON. Mr. President, let me suggest, if I may, 20 minutes are allocated on our side, the side in opposition to the bill. Senator GRAMM has a conflict, and perhaps if he goes forward for 5 minutes and perhaps if Senator KENNEDY would like to go forward, we can do it a bit in reverse. We can have Senator QUAYLE speak in opposition, and then yield back.

Mr. KENNEDY. Fine.

Mr. BYRD. Mr. President, for the time being, I believe the Senators would prefer to leave the 40 minutes in place, if it is needed. It may not be needed, and the respective offices on both sides should take that into consideration, that the vote on final passage may occur earlier than anticipated.

The PRESIDING OFFICER. There remain 40 minutes of debate evenly divided on the bill.

Mr. KENNEDY. Mr. President, I would be glad to yield such time as the Senator from Texas desires.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, I will be brief. We have debated this bill now for several days. I think Members at least have come to a conclusion as to where they stand on it. I for one think the issues are not as clear as I wish they were.

No one believes that polygraphs are an infallible tool in ferreting out information. I think one thing that we have all come to understand is that the polygraph is a very dull tool. It is a procedure that has inherent problems, and I think, quite frankly, all of us are concerned about the intrusive nature of the polygraph examination in terms of putting people under stressful situations and creating the potential that people are going to turn up negative tests when, in fact, they are telling the truth.

I think everyone in this great body is concerned about the impact on people who test negative and who are affected by it. I think also there is real and legitimate concern about how the tests are administered. But I feel this bill goes far beyond the response that is justified by these concerns.

What a great paradox it is that we go on at great length about the problems with the polygraph exam, and we take steps that deny the private sector the right to use it in prescreening and severely restrict its use, under any circumstances, for the private sector, and yet we totally exempt the Federal Government, State governments, and local governments.

It is as if what government does is so important, so critical to the future of the Republic, that we are forced in government to use dull, inefficient, intrusive tools, but the private sector is so insignificant, so irrelevant to the future of America that the sector of the economy that pays the bills and pulls the wagon is excluded from the use of a tool which government clearly finds in some circumstances indispensable.

I know the distinguished Senator from Massachusetts feels strongly about the use of polygraph. He has spoken with great effectiveness about the inherent problems with the test. I would like to remind my colleagues

that with all the problems we have with polygraph, polygraph is used by all of the intelligence agencies that work on behalf of our Nation.

We found out one thing clearly from the Walker spy case, and that is, if the Soviet Union viewed polygraph in the same way that the GAO study viewed it, they clearly have not shown it in terms of their policy because they told Walker: "You are so important to us that we don't want you to put yourself in a position where you have got to take a polygraph examination."

So do I think there are problems with private use of polygraph today in the Nation? Yes. But I think we are going too far, for all practical purposes, in excluding the use of polygraph for prescreening and so severely limiting it in other uses as to render it virtually ineffective.

I think there are many uses. Whether we are talking about polygraph for people who are flying airplanes, driving trucks and buses, driving trains, where drug tests have an inherent problem that if you are not using the drug at the time you are given the test it does not show up, I for one am loath to preclude the use of this test, imperfect though it be.

Forty States have responded to the problems discussed here. It is not as if no other element of government has become concerned about this problem. I, for one, do not understand why suddenly this is a Federal problem. I happen to believe that the State that I represent, the great State of Texas, is perfectly competent in setting standards for the use of polygraph, whether it is being used to detect whether airline pilots are using cocaine or whether it is being used to determine where convenience store cash register operators are stealing from the company and therefore stealing from the people who are buying milk, bread, and eggs from the store.

I think the State of Texas is competent to determine what kind of standards ought to be used, in using polygraph, to ask people who are going to work in day care centers whether or not they have ever been indicted or convicted for child molesting.

Now, I know that there are always other ways of going back into all these records. I am not saying that a failed polygraph examine is in and of itself proof of anything other than a failed polygraph examine, but at least it allows you to then go back and look at the records more carefully. I think this bill goes too far. I think it unnecessarily and unreasonably tramples on States rights and I urge my colleagues to vote no.

Do I think this bill is going to pass? Yes, I do. Do I think, given the fact that the House has already cast a vote that would sustain a Presidential veto, that the President may look at the final product and decide that this is not the way to go and veto it, and therefore the vote would be on sustaining that veto, I do not know whether that is going to happen or not, but I think it is a clear possibility. If we get a substantial vote here, I think that gives the President more leeway to look at this bill.

I do not believe this is a wise bill. I do not think it is in the public interest. I do not think it balances the rights of people who do not want to take polygraph examines with the rights of people who do not want someone using narcotics while they are flying planes or driving buses or driving trains. There ought to be some reasonable compromise. If the problem is with private sector testing and the procedures, perhaps we need some Federal guidelines. But to come in and simply outlaw prescreening, to so severely limit the use of polygraphs for the private sector when we in no way affect the ability of the public sector, it is as if we are not concerned about privacy and the rights of people. If those people happen to be working in wild flower research at the Department of Agriculture, suddenly we are not concerned about their rights and the problems with this test. If they happen to be working as security guards at a bank or if they happen to be working in child day care centers or they happen to be flying an aircraft, suddenly we are concerned that no one should have a right to ask them a question and have some ability to determine whether they are answering that question honestly so that they might look behind that question. So I know there are those who are concerned about abuses, and so am I. But one abuse does not justify another.

In my humble opinion this bill is not in the public interest. I urge my colleagues to vote no.

I reserve the remainder of my time.

Mr. President, I am not sure who controls time on this side. I think it was equally divided.

The PRESIDING OFFICER. That is correct.

Mr. GRAMM. I would like the distinguished Senator from Indiana to control the time since I have to leave the floor.

The PRESIDING OFFICER. The Senator from Texas has yielded the floor. Who yields time?

The Senator from Indiana controls the time in opposition. Who yields time?

Mr. QUAYLE addressed the Chair.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. QUAYLE. I yield myself such time as I may consume.

The PRESIDING OFFICER. The Senator from Indiana is advised there are 11 minutes and 8 seconds remaining on his side. The Senator from Indiana is recognized for such time as he may need.

Mr. QUAYLE. I yield myself 8 minutes.

Mr. President, first, I congratulate the chairman of the committee, Senator KENNEDY, on the legislation before us. He and Senator HATCH have fought valiantly, and I think that they will in fact have an overwhelming vote. There was friendly but adversarial discussion on this bill.

My opposition goes to this bill on two fundamental points. One, I do not believe that the Federal Government should involve itself in something in which the State governments and State agencies are doing quite well. It has been pointed out that a number of States which in fact already have either a ban or requirements on polygraphs are taking it very seriously. I think this is the beginning of getting into preemployment screening, and I do not know where it is going to end.

Once we start with lie detectors, we will get on to perhaps drug testing, although the Senate went on record yesterday saying it would not do that. But drug testing is not reliable in many cases either. We will get into all sorts of other preemployment things, perhaps like the preemployment psychological tests that some might say are harassing or intimidating. Once the Federal Government starts down this road, I do not know where it will end.

As far as principle, I think that is a very fundamental point that I simply cannot overcome in trying to support this bill, even though I, like others, have a great lack of confidence in lie detector tests. I cannot help if employers want to rely on information that is not valid. If they want to make dumb mistakes, I do not think it is the role of the Federal Government to clear up those mistakes.

Second, I do believe there is a tinge or perhaps a bit of hypocrisy in this bill. What we do is say it is OK to do in certain instances, particularly for the Federal Government, but it is not OK for the private sector. As a matter of fact, even if we would apply the standards of polygraphers for the Federal Government, that still would not be OK for the private sector. Once again we are saying that Washington knows best.

Unfortunately, I had the Washington syndrome come home last night as I was unable to attend the game but Washington beat the very capable, skillful, dedicated Indiana Pacers at the Capital Centre, devastating them. Washington won out in that basketball game last night and now Washington is going to win out once again today. I could not control or influence the outcome of that basketball game. I do believe, however, we have had some impact on what Washington is going to do now to my State and to the rest of the country on this particular vote.

Mr. President, many Senators have come to me and asked how they should vote on this bill. And I am going to say now to Senators who have asked me that, if they have any desire whatsoever to vote for this bill, they ought to go ahead and vote for it. I have philosophical concerns about it, particularly the Federal preemption

and the Federal Government getting involved in something I do not believe it should, and I do not know where that road leads us, but I say this is going to be construed more as a political vote.

It is very important to some political constituencies. I know that organized labor has this very high on their agenda. To many of the so-called civil rights groups, I am sure this will be cast as perhaps a civil liberties vote.

So I would say that Senators on this side of the aisle particularly that are inclined to give maybe the administration the benefit of the doubt and want to go along in case, as the Senator from Texas said, there may be a veto, I would say there is almost no chance at all for a veto. I do not think it is going to happen. Therefore, I do not think Senators, who have some concern about this and are worried about maybe not changing their vote on it when the veto comes back—there is not going to be a veto. This administration will sign this bill.

This administration a year ago opposed this bill on the fundamental philosophical point that this was an unreasonable Federal intrusion and something that was clearly relegated to the States. This year they did not. This year they set up a statement of opposition on three minor concerns that they had. This administration on this bill is caving like a house of cards. They in fact will not veto this bill. And therefore why should, unless you are just really philosophically opposed to this, you go out on a limb on something that is not politically popular, and vote in opposition to it?

So I would say to those Senators who have still not made up their mind that as far as my advice to them, if you want to vote for this bill, you have any inkling that you want to be on record on the political right side of the issue, and you do not have the major philosophical objection as far as the Federal Government, go ahead and vote for it. Do not worry about a veto. A veto is not going to happen. This administration does not have the backbone at this time to veto this bill. They will not do it. As a matter of fact, you could probably almost send anything down there under this bill, and it will get passed. They will sign it.

They may say if you go too far in conference we might not sign it. Well, there will be lots of threats, a lot of joking. But I know this administration pretty well. I deal with them, dealt with them for a number of years. And on this issue from a year ago their position has changed dramatically. They have folded up shop like a house of cards, and they will not veto this bill.

I might just say, Mr. President, that this has been a debate on what I consider to be a very minor bill. I do not consider this a major piece of legislation. I think it is a piece of legislation that did not warrant the Senate's attention. I do not think it warranted the 3 days we took on this bill. There could have been ways to delay this bill even further. We decided not to because it just simply was not beyond the few that have the philosophical opposition. So there is no use to prolong debate.

The cloture has been invoked. We can see where the votes are. There were something like 122 amendments that were filed that could have been called up in a postcloture type of filibuster. It could have gone on and on and on on a very minor piece of legislation. It could have been a very long and protracted debate but we decided there was no reason to be a Don Quixote on this, that there will be other issues that will come along that will be far more important legislation.

But even on this matter, having 120-some amendments on the desk on postcloture, spending 3 days invoking cloture, also we now have an arrangement for not putting a sense-of-the-Senate resolution on the arresting of Senators on this bill. We now have 5 hours I believe dedicated to the issue after this bill. So it became much more entangled with much more debate than it indeed deserved. But I think that these issues are important. I am still, as I said, principally philosophically opposed.

The PRESIDING OFFICER. The Senator's 8 minutes have expired.

Mr. QUAYLE. I yield myself an additional minute.

Mr. President, I am still opposed to this bill. I think the role that we are on involving ourselves in is something that has been relegated to the States properly—they have done a good job—and is something that I cannot support. I will vote in opposition to that because of the double standard I think it sets. It is a philosophical opposition that I have.

But once again, those Senators that are inclined to vote for this or trying to think this issue through, if you have any inclination at all to vote for this bill, you might as well do it. It will be signed. You will not have to face a veto because the administration will simply sign this legislation in my judgment.

I reserve the balance of my time.

The PRESIDING OFFICER. Who yields time? The Senator from Indiana has 2 minutes and 32 seconds remaining.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I would like to take a few minutes to say why we are here today and why we are where we are today. After 3 days of debate and numerous amendments, we are on the verge of passing a significant change in Federal labor laws. Why? Because the bill before us, S. 1904, is a carefully crafted compromise designed to protect both individual rights and employer rights.

Mr. President, I believe my record in this body is second to none when it comes to defending the rights of the private sector. But I have been a willing participant in fighting for employee rights as well. That is why I am proud to be the lead cosponsor of this legislation along with the sponsor, Senator KENNEDY. It protects both employers and employees and does so in a manner that does not violate the other fundamental interests.

The record is fairly clear on the limitation of the polygraph. But do not take my word for it. Do not take the committee word for it. Look at the scientific record. All the scientific data indicates that preemployment polygraphs cannot—I reemphasize that word "cannot"—predict future performance. The machine was simply not designed to predict future performance.

Given this fact and the fact that more than 2 million Americans are given polygraphs every year, we know that even under the best of circumstances, with the best polygrapher doing the best test and perming the best analysis 300,000 honest Americans are branded as liars every year. That is pure and simply wrong.

That is a stigma that they are going to wear like a scarlet letter every day of their remaining lives. Let us change the world "lies" to "careers."

The evidence also indicates that a carefully crafted polygraph test given in conjuction with an investigation can be of assistance. This bill permits all employers to use the polygraph in such instances so long as the results of the exam are not the sole basis of the resulting employment action. In other words, the bill is a reasonable and responsible attempt to focus use of the polygraph where it is likely to be the most accurate.

Mr. President, if polygraph testing is so critical to screening of felons and drug abusers, if polygraph testing was the last defense against anarchy in the workplace as the opponents on the floor have argued, then one would imagine that States like New Jersey where the polygraph is already banned would be awash in criminality. The State's economy should be devastated on the brink of collapse but of course everybody knows that it is not.

Over the last 3 years I have asked every employer organization that has met with me on this issue to pull together data, hard evidence, that demonstrates how the polygraph ban has hurt these States. To this date, I have received absolutely no data because there is none. We have also heard about how effective the polygraph is in scaring confessions out of applicants.

I do not doubt for a minute that the polygraph is a very terrifying experience. But really, is this body really ready to say that we feel it is so important for employers to be able to terrify a few applicants into confessions that we are willing to pay the price of branding 300,000 honest Americans as

liars every single year? I think not. I am not willing to do that.

Mr. President, I wonder how many of my colleagues would like to take a polygraph on a regular basis. I wonder how many of them would like to take a polygraph, period. I wonder why anybody would want to take one. There are some instances where perhaps we have to utilize them. This bill takes care of those instances. But I do not think anybody wants to take them.

I wonder how many of us would like to see our chances to represent our respective States hang upon a 15-minute special polygraph given by some ill-trained, unbonded examiner of, you know, someone else's choosing.

Well, that is disturbing to me. I think it is disturbing to many other people. Of course, with that understanding, let us just welcome everybody to the real world of the polygraphing in the private sector. This bill is going to change that.

Mr. President, employers are not without tools to screen applicants. But unfortunately some, I would say the best, tools really take some time: Checking résumés, references, personal involvement in interviews, testing where appropriate, and knowing how to ask the applicant questions. These methods are still the key to hiring people. We all know that, because that is the way we hire our staffs here.

Finally, Mr. President, some have argued that the banning of free employment polygraph tests will destroy the private sector. As the ranking member of the Committee on Labor and Human Resources, I can say with great confidence that this bill is not an economy destruction bill. I can guarantee that a lot of them will come out of this committee in the future, in this year. You will be able to know when they come, because I will be right here arguing against them, and I will be arguing vociferously against them, but this is not one of those bills. S. 1904 is a carefully crafted compromise designed to protect employer rights and the rights of employees. I hope my colleagues will support this bill and give individuals throughout the Nation some needed added protection.

Mr. President, I appreciate the efforts made by our staffs on this bill, and I appreciate the leadership of Senator KENNEDY on this bill. He has been prepared and has done a terrific job, and he has explained many good reasons why this bill is important. I have enjoyed working with him and will enjoy working with him through the rest of this process.

This bill deserves to be passed for the benefit of employers and employees. It is the right thing to do.

I am sick and tired of people using this instrument in an improper way, knowing that with 15-minute quickie polygraphs, virtually all of them are not accurate.

I ask unanimous consent to have printed in the RECORD a letter from the National Federation of Independent Business and a letter from the National Restaurant Association.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

NATIONAL FEDERATION OF INDEPENDENT BUSINESS,
Washington, DC, March 1, 1988.

Hon. ORRIN G. HATCH,
U.S. Senate,
Washington, DC.

DEAR ORRIN: On behalf of the more than 500,000 small business members of the National Federation of Independent Business (NFIB), I want to convey our support for your efforts to delete the mandatory posting requirements (Section 4) contained in S. 1904, the Polygraph Protection Act of 1987. If a roll call vote occurs on your amendment, it will be a Key Small Business Vote for NFIB in the 100th Congress.

As our field representatives travel the country each day renewing memberships, we ask our members to respond to a survey of eight questions. The questions on the survey are changed each quarter. Though not taken from a statistically valid stratified sample, the responses are certainly indicative of the pulse of small business at the time they are taken.

On the issue of polygraph examinations, 94.7 percent of those surveyed do not administer polygraph tests to prospective employees. With regard to current employees, 93 percent do not administer polygraph exams.

Government paperwork, whether state or federal, remains a burden to small businessmen and women. The notification requirement in S. 1904 serves no useful purpose in our view. It is patently absurd to require employers to post a notice for an action they cannot take. Therefore we support your efforts to relieve small business of this improper burden.

Once again, Orrin, I thank you for your efforts on behalf of our nation's small employers.

Sincerely,

JOHN J. MOTLEY III,
Director, Federal Governmental Relations.

NATIONAL RESTAURANT ASSOCIATION,
Washington, DC, February 26, 1988.

Senator ORRIN G. HATCH,
Washington, DC.

DEAR SENATOR HATCH: It is my understanding that Senate floor action is expected on S. 1904, the Polygraph Protection Act of 1987, in the near future. As always, thank you for your efforts on behalf of the National Restaurant Association in crafting this legislation.

S. 1904 addresses a primary concern of the business community—it preserves the ability of employers to utilize polygraphs in the event of theft or misconduct in the workplace. This bill is significantly less restrictive than the House bill proposing an absolute ban on polygraph testing, which the association adamantly opposes.

I urge your ardent protection of S. 1904 section 7(d) provisions that preserve incident-specific polygraph testing. Only if these provisions are retained during floor consideration and in conference, can the association maintain its support of polygraph legislation.

Many thanks for your continued interest in the foodservice industry.

Sincerely,

MARK GORMAN,
Senior Director, Government Affairs.

S. 1904—POLYGRAPH PROTECTION ACT

(Kennedy (D) Massachusetts and 13 others)

S. 1904 differs in various respects from its House counterpart, H.R. 1212. The President's senior advisors have indicated that they would recommend that H.R. 1212 be vetoed. However, the Administration also strongly opposes S. 1904 unless amendments including the following are made:

Expand section 7(d) (which would permit polygraph examinations to be administered in connection with ongoing investigations of business loss or injury) to allow the investigation of serious workplace problems that threaten not only material loss, but also the health, safety and well-being of other employees;

Revise section 8 to transfer from the Department of Labor to a more appropriate agency the responsibility for establishing standards governing certification of polygraph examiners; and

Delete provisions in section 6 which would authorize private civil actions by employees or job appliants against employers who violate the provisions of S. 1904. These provisions are unnecessary given the other enforcement provisions contained in the bill.

Mr. HATCH. Mr. President, I should like to make a statement on administration policy.

While it is clear that the administration still opposes S. 1904, they have not sent us a veto threat.

I find this shift of position encouraging. I look forward to working with the administration during the conference, and I hope we can report a bill that the President will be able to sign.

Mr. President, I believe that the administration has been able to look and realize that there are some really good arguments for this particular legislation. I think they also understand that this legislation is a carefully crafted compromise among all sides and that we have worked hard to pass this legislation.

I hope that by the vote today, we send the message that this legislation deserves to become law. I will do everything I can through the remaining part of this process to see that it does.

I compliment our committee and our staff members, and certainly Senator KENNEDY and others who have played an important role.

The PRESIDING OFFICER. Who yields time?

The Senator from Massachusetts is advised that his side has 11 minutes and 41 seconds remaining.

Mr. KENNEDY. I yield myself 8 minutes.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized for 8 minutes.

Mr. KENNEDY. Mr. President, as we come to the final moments of discussion of this legislation, I want to take a moment of the Senate's time. First, I wish to express my appreciation to the Senator from Utah [Mr. HATCH], who is the ranking minority member of the Committee on Labor and Human Resources, the former chairman of this committee, with whom I have had the opportunity to work closely in the shaping and the

drafting of this legislation. It has been an ongoing and continuing challenge.

Senator HATCH had introduced other legislation dealing with polygraphs in the last Congress. We were unable to get floor consideration of that legislation, and we have gone back to the drafting board. We now come to the Senate and urge our colleagues to vote favorably on what we consider to be an extremely important piece of legislation that will provide a much greater degree of dignity to the American worker, fairness to the worker, and a greater sense of realism in terms of the use and abuse of polygraphs in the workplace.

Mr. President, we do not take the Senate's time lightly. We believe that this legislation is important. Over the course of this past year, we have been able to work with a number of individuals, corporations, and trade associations in the private sector in fashioning and shaping this legislation. I, for one, am very grateful for their help, their assistance, and their insights as well as for their cooperation and support. We have worked with a number of the representatives of workers who have given enormously revealing testimony of what has happened to many of them and is happening to many of them in different job sites all across this country. It is indeed a chilling story that has been revealed to us, not only during the course of our hearings but also in private conversations. We are grateful to them for their help and support.

In the past hours, we have received some information from the administration in connection with reservations they have expressed about this particular approach. We have been very much aware of the division that had existed within the administration with respect to their official position. Some of the agencies within the Justice Department, who have commented upon the value of polygaphs in the past, had differing views from the position which has been taken by the Department of Labor.

By and large, I feel that their involvement has been a constructive one; and we hope that before the ink is dry on this legislation, we might be able to persuade them, and to gain their support. I think their impact has been important and useful, but I think the legislation must come into law with or without their support. I would prefer that we have their support.

Mr. President, as we come to a final conclusion on this matter, I want to remind our colleagues why this measure is of importance. We have more than 2 million polygraphs given in this country every year, and that number has grown dramatically, almost exponentially, all across our Nation.

It is fair, I believe, in evaluating the effectiveness of the polygraph, in trying to tell the difference between truth and deception, for Members of Congress to speak on the issue. In many instances, it is a instrument which is abusing the rights of millions of workers and in many instances scarring those individuals in ways that they will remember for the rest of their lives, and that their families will remember for the rest of their lives.

We have been extremely fortunate in having the Office of Technology Assessment do a very thorough and comprehensive review of all the studies that have been done on polygraph over a period of some 18 years, right up to the most modern ones. We have a number of experts in this area. One of the most significant and thoughtful is Professor Raskin, of the State of Utah.

What we find are some undeniable truths: With the current number of polygraphs taking place in this country, there are going to be up to 320,000 individuals, workers, who will be wrongfully labeled by the polygraph. Two-thirds of those individuals will be telling the truth but labeled deceptive. What that means in terms of those families, what that means in terms of the possibilities of future employment, what that means in terms of their future is one of the most heartrending stories that affect working men and women in this country.

That problem is growing. Somehow or other even on the floor of the Senate, we have the false understanding or false impression that we are getting truth with the administration of the polygraph.

The scientific and medical information is that truth is only part of the story and a small part of the story.

We have not ruled out all polygraphs, Mr. President, and we have recognized that under certain circumstances when you have a reasonable suspicion that individuals have been involved in a specific economic loss on injury, we permit under limited circumstances the use of the polygraph. Under these circumstances, the possibility of gaining the truth is enhanced dramatically, and under these circumstances the polygraph itself will not be used solely in making the ultimate judgment in terms of the employment possibilities for that individual, without additional supporting evidence.

So, we believe that we have here recommending to the Senate an equitable balance.

The PRESIDING OFFICER. I must reluctantly advise the Senator the time has expired.

Mr. KENNEDY. I yield myself 2 minutes.

The PRESIDING OFFICER. The Senator is recognized for an additional 2 minutes.

Mr. KENNEDY. With this balanced bill, that has been described in the past days, we believe that we are meeting our responsibilities both to the workers and to the private sector.

Mr. President, in just making some concluding remarks, I want to remind our colleagues who are concerned about the Federal aspects of this legislation that this is an intrusion in the States, that one of the great States righters of this body and one of the great libertarians of this body was a distinguished Senator from North Carolina, Senator Ervin. No one ever accused Senator Ervin of wanting to extend the long arm of the Federal Government, but those of us who had the opportunity to serve with him know of his deep devotion to the constitutional civil liberties of this country, and it was Senator Ervin who said over a decade ago that the polygraph is "20th century witchcraft". He was right.

So, Mr. President, we understand that the polygraphs do not stop lies; in too many instances they tell lies.

It is important that we in this body are going to put the polygraph, which has been used as an instrument to intimidate and to terrify so many workers in this country, on the scrap heap, so to speak, with other instruments which have been used in the same manner in the past.

I again think that with this legislation we are going to see the day when the average worker in this country is going to be able to walk into his or her workplace with the sense of dignity and self-respect.

With this legislation, I think we are striking a blow for greater sense of decency not only for millions of workers but for American society.

I urge my colleagues to vote in favor of this legislation.

I withhold the remainder of the time.

The PRESIDING OFFICER. The Senator from Massachusetts is advised he has 1 minute and 15 seconds remaining.

Who yields time to the Senator from Mississippi?

Mr. QUAYLE. I yield the remainder of my time to the Senator from Mississippi.

The PRESIDING OFFICER. The Senator from Mississippi has 2 minutes and 32 seconds.

Mr. COCHRAN. Mr. President, I thank the distinguished Senator from Indiana for yielding to me. He has provided strong leadership in our committee on this issue and I commend him for that.

In looking at the proposal before us, one aspect jumps out at the Senate. Here again we are being asked to substitute Federal regulations, Federal judgment on issues such as qualifications for the performance of a job, licensing in the States, for the judgment and wisdom of State legislators and State government officials, for no good reason.

I say that, Mr. President, because in States such as mine—where for 20 years there has been a law on the books regulating the administration of polygraph examinations and the licensing of polygraph examiners—State regulation has worked very well.

While workers and prospective employees are protected, those who have

a legitimate interest in the use of polygraphs as an investigative technique—the State government, city governments, police departments, other investigators—are permitted to use them because they have been shown to be useful tools in the investigative process.

One witness before our committee testified that in States where there are no restrictions on the use of polygraphs for prospective employees or those in the workplace, losses from inventory are 25 percent less than in States where polygraphs are banned, such as in Massachusetts and other States.

The evidence is clear that passage of this legislation today will increase consumer costs in many areas and increase losses in certain businesses.

Others who testified in opposition to the bill included the Jewelers of America, American Retail Federation, and others who have had day-to-day practical experience, in the workplace in selective use of the polygraph examination.

Obviously, the committee felt that the polygraph examination could be useful and was appropriate in some circumstances, since it exempted many areas of Government activity and many contractors who do business with the Federal Government.

So, in the wisdom of the Federal Government, on the one hand, the polygraph is lawful and appropriate to be used and, on the other, it is not.

I suggest, Mr. President, that we vote against this bill. Let us leave the regulation of the use of polygraphs to the States where it rightfully belongs.

Mr. FOWLER. Will the Senator from Massachusetts yield for a question?

Mr. KENNEDY. I certainly will yield for a question from the Senator from Georgia.

Mr. FOWLER. We need the continued use of the polygraph for preemployment screening of those who handle controlled substances. The House passed by a very wide margin such an exemption to the Williams bill—by a vote of 313 to 105. Would the Senator from Massachusetts be willing to accept that language in the conference between the two bodies on this legislation?

Mr. KENNEDY. Senator HATCH and I have discussed this, we have discussed this with the other Senate conferees, discussed this with the sponsors of the House amendment, and discussed this with the principal sponsors and likely House conferees. We will be willing to agree to recede to the House conferees insistence on the amendment dealing with the employees who handle controlled substances.

Mr. FOWLER. I thank the Senator from Massachusetts, and will not offer my amendment.

Mr. DURENBERGER. Mr. President, I rise today in support of S. 1904, the Polygraph Protection Act of 1987. This bill is designed to curb the abuses of widespread polygraph testing and to protect the rights of individuals who are subjected to the lie detector test. I applaud the efforts of my distinguished colleagues from Massachusetts and Utah, Mr. KENNEDY and Mr. HATCH, in crafting a sensible, fair response to the growing misuse and abuse of polygraph examinations.

Over the last decade, private employer's use of polygraphs has increased dramatically. The American Polygraph Association estimates that approximately 98 percent of the over 2 million polygraphs given each year are administered by private employers. Only 2 percent of all tests are administered by the public sector. Mr. President, I find this fact alarming. Over 2 million tests are being given each year; yet, there are no uniform standards for polygraph machines, there are no uniform licensing requirements for examiners, and there are no uniform protections for individuals who take a polygraph examination. Up until now, the Federal Government has relied upon State legislatures to regulate the use of lie detector tests. However, I believe that the time has come for Congress to establish national minimum standards for polygraph examinations.

S. 1904 bans the use of lie detector testing for preemployment and random employee screening. Employers have increasingly been using lie detectors to test job applicants and current employees to determine character traits such as honesty and trustworthiness. However, there is no scientific evidence to suggest that a polygraph test can accurately or reliably predict the honesty or dishonesty of an individual. The polygraph test does accurately measure stress by plotting changes in three physiological responses—blood pressure, respiration, and sweat gland activity—but it cannot pinpoint the cause of stress. And because there is no physiological response unique to lying, stress caused by anger, fear or anxiety will produce the same physiological reaction as stress caused by deception.

As a result, many honest individuals are being denied employment because they have failed a polygraph exam, while many dishonest individuals are being employed because they were able to outsmart a machine or an examiner. Mr. President, polygraph examiners simply cannot identify stress caused by deception, nor can they assess such obscure qualities as honesty or trustworthiness in a 15-minute interview. Even in criminal investigations, where there is a scientific basis for using the polygraph, interviews of suspects regarding their involvement in a specific incident last at least 2 hours.

S. 1904 does recognize the scientific basis for using the lie detector test in investigations of specific incidents. The bill allows employers to use the polygraph examination when investigating an economic loss; however, the employer must meet the following requirements before requesting an examination. First, the employer must have experienced an economic loss, such as theft, embezzlement, or industrial espionage. Second, the employer must have reason to believe that the employee had access to the property in question. Third, the employer must have reason to suspect that the employee was involved in the incident. Finally, the employer must file a police report; an insurance report; or an internal statement describing the details of the situation. Once an employer has met these requirements, he or she may request an employee to take a polygraph test as long as the test does not violate State or local law, or any collective bargaining agreement.

Under the bill, an employee has the right to refuse to submit to the polygraph examination. And, his or her employer is prohibited from taking any adverse employment action based solely upon that refusal. An employer may only discipline or dismiss an employee when there is additional supporting evidence.

If an employee does submit to a polygraph examination, S. 1904 provides important protections. For example, an employee must be advised of his or her rights in writing prior to the examination, and the employee must be given an opportunity to review all questions which will be asked in the interview. S. 1904 also defines the types of questions an examiner may ask, and specifies that the employee may terminate the test at any time.

Again, once the interview is completed, an employer may not take disciplinary action against an individual based solely upon the results of the polygraph examination. However, evidence used to support dismissal may include statements or confessions made during an examination.

To protect the privacy rights of the tested employee, S. 1904 provides that the information disclosed during an examination may not be released to anyone other than the employee or employee's designee, the employer, government agencies authorized to conduct such tests, or any person authorized by a warrant to obtain such information. Because irrelevant, yet highly personal, details are often disclosed in a polygraph examination, I believe that this provision is a particularly important safeguard against the misuse of information obtained in an interview.

The final component of S. 1904 governs the regulation of polygraph machines and examiners. This legislation requires the Secretary of Labor to set minimum standards for polygraph examiners relating to conduct, competency, bonding, instrumentation, training, and recordkeeping. I believe uniform standards are necessary to ensure a minimum degree of accuracy in an already unreliable test, and to prevent employers from taking employment action based on bad results

obtained from a faulty instrument or an inexperienced examiner.

Federal, State, and local governments are all exempt from the provisions of S. 1904, as are Federal Government contractors with national security responsibilities. As former chairman of the Senate Select Committee on Intelligence, I recognize the necessity of a "national security" exemption. The polygraph examination has limitations, but it does play a role in the effort to protect highly sensitive information.

Mr. President, opponents of S. 1904 use the above exemptions to argue that polygraph testing should be good enough for use in the private sector if it is good enough for use in the public sector. I don't buy this statement, because the Federal Government has in place very strict rules governing lie detector testing. For example, the Federal Government trains its own examiners, defines who can be tested, and prohibits the denial of employment based solely on the results of a polygraph. In general, Federal Government uses the lie detector test as only one component of an extensive background investigation.

Because S. 1904 sets minimum national standards for use of the lie detector test, this bill will only affect States which have no polygraph regulations or have less strict laws. Therefore, in States where use of the lie detector test has been banned, such as my home of Minnesota, S. 1904 will have little effect.

Mr. President, I would also like to express my support for the amendment offered by my distinguished colleague from Ohio, Mr. METZENBAUM, on an issue unrelated to polygraph testing. My colleague's amendment, which I am pleased to cosponsor, expresses this body's opposition to the proposed $400 million World Bank loan to the Mexican steel industry. The World Bank has proposed to lend Mexico $400 million to restructure and modernize an inefficient steel industry. However, I cannot understand how this loan will assist economic development when there is already an excess capacity of world steel production. Mexico will be unable to repay its World Bank loan and unable to repay its loans to American banks if it cannot sell steel. And although I agree that it is in the best interest of the United States to promote growth in the Mexican economy, I do not believe that a $400 million loan to the Mexican steel industry will provide steady jobs and stable growth. This loan will only put Mexico deeper into debt and will further harm an ailing United States steel industry. I urge my colleagues to send a strong message to the World Bank that it should reject the proposed loan to Mexico.

Mr. President, I support S. 1904 because I believe that American workers need protection from the widespread abuse and misuse of the lie detector test. The bill crafted by my colleagues from Massachusetts and Utah is a sensible and balanced response to a growing problem, and it has broad support in both the public and private sectors. I am pleased that S. 1904 is being considered by this body. I urge all of my colleagues to support the Polygraph Protection Act of 1987.

Mr. KERRY. Mr. President, I support S. 1904, the Polygraph Protection Act of 1987. I believe that this legislation represents an appropriate balance of the interests of employees and employers, and is a reasonable and fair solution to the problems inherent in widespread polygraph testing. This bill has bipartisan support, and also has support from labor, business, and civil liberties organizations. As a member of the Labor Committee in the 99th Congress, I cosponsored similar legislation. I commend Senator KENNEDY for bringing this bill before the Senate.

I oppose the use of polygraphs in preemployment screening, which this bill would prohibit. This bill does not prohibit the use of polygraphs in postemployment investigations of economic loss, with appropriate safeguards. This is a reasonable and balanced approach. The bill contains appropriate exemptions where they are needed, and I oppose the attempts of some to carve out additional industry exemptions. This legislation does not need amendments to cater to specific special interests, beyond the carefully crafted amendments included in the bill as amended by the Senate.

S. 1904 already has the support of a number of organizations which opposed other polygraph bills, including the American Association of Railroads, the American Bankers Association, the National Association of Convenience Stores, the National Grocers' Association, the National Mass Retailers Institute, the National Restaurant Association, the National Retail Merchants Association, and the Securities Industry Association.

The use of polygraphs has tripled over the past 10 years. As industry reliance on this device grows, Congress has an obligation to decide whether the use of this tool constitutes an infringement of the rights of employees and prospective employees. I believe that polygraph use in preemployment screening, because of questions about its reliability as well as the possibility of abuse, constitutes such an infringement.

The polygraph instrument, sometimes called a lie detector, cannot actually detect lies. It is wholly dependent on a subjective reading by a polygrapher. A 1983 OTA study by Dr. Leonard Saxe of Boston University concluded that lies were detected between 50.6 percent to 98.6 percent of the time, and that true statements were correctly classified between 12.5 percent and 94.1 percent of the time. That represents not much better than a toss of the coin in many instances. These statistics refute the use of the polygraph as a means of judging the veracity of a subject.

As a prosecutor in Massachusetts, I found the polygraph to be sometimes a useful tool in criminal investigations. I am pleased, therefore, that this legislation contains an exemption for Federal, State, and local governments as well as for contractors doing sensitive defense work. I also believe that an exemption for private employers in the areas of armored-car personnel, security alarm systems, and other security personnel is warranted as a law enforcement tool, in conjunction with other law enforcement measures.

But of the estimated 2 million people a year who are administered polygraph tests, 98 percent of them are given by private business, with 75 percent of those tests being given for preemployment screening.

The OTA study concluded that "the available research evidence does not establish the scientific validity of the polygraph test for personnel screening." Yet the increasing amount of preemployment testing means an increasing number of our citizens who are dependent on the results of this often unreliable machine. American courts cannot compel defendants to take these tests, and employers should not be able to mandate the test as a condition of employment.

I also have other concerns about the use of the polygraph as a tool of intimidation. A Florida polygrapher noted that the polygraph was "the best confession-getter since the cattle prod." Many polygraphers say that the bulk of their confessions take place just prior to the actual examination when the subject is told about the high accuracy of the machine. They believe that the specter of an infallible lie detector causes people to confess rather than be caught by the machine. This technique is unfair to prospective employees, who are not guilty of any crime, and is more reminiscent of the methods of a totalitarian country than of the United States of America.

For this reason I have opposed efforts to add an exemption to this bill for voluntary polygraph examinations. I have serious questions about how voluntary these tests would actually be in many instances, given the balance of power between employer and employee and the inherent potential for coercion in a so-called voluntary test. I have also opposed other efforts to open up loopholes in this bill by granting exemptions for specific industries. Given the unreliability of polygraph testing, particularly the 15 minute quickie tests given in many commercial and industry situations, these tests are unwarranted, unnecessary and unfair.

The State of Massachusetts long ago banned the use of the polygraph for employment purposes. In 1959, we became the first State in the country to bar its use in employment. As is well known, the economy of Massa-

chusetts has thrived without the use of this device in industry. Merchants and industries in Massachusetts have not suffered the huge losses that some have alleged would take place with a polygraph ban. I am told that some national companies which operate in States like Massachusetts, or the 20 other States that ban or restrict polygraph use, do test prospective employees out of State on a regular basis. This bill would end this wholesale circumvention of our State laws.

This is an important and timely piece of legislation. Last year, we celebrated the 200th anniversary of our Constitution. This year, let us remember that the Constitution is a living document, and let us protect the constitutional rights of American workers. I am pleased to join with my colleagues in supporting the passage of S. 1904.

Mr. MATSUNAGA. Mr. President, I rise to urge my colleagues to pass, as amended, the Polygraph Protection Act of 1987. As reported by the Labor and Human Resources Committee the bill strikes a delicate balance between protecting the rights of employees and ensuring that employers have appropriate means to protect their businesses in cases of specific illegal incidents.

Mr. President, the polygraph test is administered over 2 million times each year. In the private sector, most polygraph tests are administered for preemployment screening purposes of random tests of employees. The test measures changes in blood pressure, respiration patterns, and perspiration. The test does not measure deception. Changes in these physiological conditions may also indicate fear, anxiety, embarrassment, or resentment rather than deception.

Mr. President, the testimony presented to the Committee on Labor and Human Resources, of which I am a member, indicates that the broad, prospective questions which are common to preemployment and random polygraph examinations are often inaccurate. The inaccuracy of polygraph examinations does not vary by industry. Although we may be particularly sympathetic to the concerns of some industries in their effort to protect themselves from unscrupulous potential employees, there is no evidence which leads us to believe that the use of polygraphs is any more effective for preemployment and random screening in these particular industries. I urge my colleagues, therefore, to avoid diluting the protections offered in this measure by adopting industry-wide exemptions to the bill.

The committee did find that a polygraph test used to investigate specific illegal incidents under strictly regulated conditions can be effective, though it is far from infallible. The bill, therefore, allows the use of a polygraph test in the course of an ongoing investigation if an employee had access to the property that is the subject of the investigation and the employer has a reasonable suspicion that the employee was involved in the incident. However, adverse action may not be taken against an employee based solely upon the results of a polygraph test; additional supporting evidence must be presented to justify such action. Furthermore, the bill requires that employees may refuse to take the examination without fear of recrimination. In addition, the bill established specific conditions under which the test may be administered and establishes minimum qualifications for polygraph examiners.

Finally, Mr. President, though many would like to leave the resolution of this issue to the States, it is clear that State regulation has not been and will not be effective. State policy on polygraph use varies widely. In fact, nine States have no laws governing the use of polygraphs. Without interstate uniformity, employers and examiners have been able to circumvent the intention of State laws, and individuals are often uncertain about the rights they may have with respect to polygraphs. It is clearly time that a uniform national policy be adopted.

Mr. President, I wish to congratulate the two principal sponsors of this legislation, the senior Senator from Massachusetts, Mr. KENNEDY and the senior Senator from Utah, Mr. HATCH. I am pleased to be an original cosponsor of this bipartisan measure to protect employees and job applicants from unjust employment actions. I strongly urge my colleagues to support S. 1904.

Mr. GRASSLEY. Mr. President, I would like to address the subject before us, namely, the use of polygraphs in the workplace.

The employment relationship is one which we, in our free market economy, value highly. Businesses, large and small, depend upon their workers to make goods and deliver services. Likewise, individuals look to employers to provide an opportunity to earn a living. A cooperative and trusting relationship between employees and employers generally creates the best environment for good profits, as well as good wages.

In regulating the workplace, Congress should strive to foster cooperation between workers and business owners. The current proposal before the Senate on polygraphs, does not, however, advance that spirit of cooperation. Rather, the legislation is a piecemeal approach to supposed-employer abuse of polygraphs.

First, the bill exempts government employers, from State and local to Federal offices. If the polygraph is so untrustworthy, why are we allowing Government officials to continue to use it? It seems to me that we in the Government, especially we in the Congress, must begin to live by the legislation we impose on private industry.

Second, the bill attempts to create a narrow situation in which an employer may require an employee to take a polygraph. But, the exception may swallow the rule. As long as an employer has a "reasonable suspicion" that an employee was involved in an incident where the employer suffered a loss or injury, the employer can order a polygraph. The only thing the employer must do is file a report, and that report can, at a minimum, be filed in the employee's personnel file.

As a result of this exception, a host of new litigation will arise. The courts will pass upon whether the employer was justified in ordering the polygraph—whether the employer had "reasonable suspicion." And, the courts will decide whether the employer filed an appropriate report about the incident leading up to the polygraph.

Finally, the bill creates a blanket prohibition on the use of polygraphs as a preemployment screening device. Before there is any employment relationship between the applicant and the employer, we are telling the employer that he may not use the polygraph as a final check on the applicant, to confirm or corroborate the judgment about the applicant.

The vast majority of employers in this country do not use the polygraph—it is costly and its value is limited. But there are industries which may find the polygraph to be worthwhile—those involved in child care, security services, financial services or narcotics, just to mention a few. The complete ban may unnecessarily limit these employers.

Clearly, the polygraph cannot be a substitute for good management and supervision. And Americans must be protected from unwarranted invasions by employers and those who administer the polygraph. The use of polygraphs may have gotten out of hand in the last few years, and while the problem needs to be addressed, I do not believe that this bill is our best step forward. I will vote against S. 1904.

Mr. METZENBAUM. Mr. President, I am an original cosponsor and a strong supporter of the Polygraph Protection Act of 1987. I want to congratulate my chairman, Senator KENNEDY, for leading this effort to correct an unjust situation facing America's workers. He is a tireless champion for the working men and women of this country and the polygraph bill is another fine example of his commitment in this area. I also want to congratulate Senator HATCH for his leadership on this bill.

It is settled that polygraph tests are not accurate "lie detectors." The American Medical Association, testifying before the Labor Committee, stated that polygraph tests "measure nervousness and excitability, not truth." Honest workers and job applicants may well be nervous when strapped to a machine and asked a series of intimidating or personal questions. We cannot have careers and rep-

utations depending on the results of such a frightening, unscientific test. But currently there is no Federal protection for millions of workers subjected to these tests by private employers. The Kennedy-Hatch bill corrects this critical problem.

The Polygraph Protection Act strikes a careful balance. It bans polygraph use in the two areas where the results are most suspect: preemployment screening and random testing. This will eliminate the most abusive uses of the polygraph in the private sector. The bill allows polygraph use where the employer has reasonable suspicion that a particular employee was involved in an internal theft. Under such limited circumstances, polygraph tests can serve as one tool to help reduce the serious problem of internal theft.

This bill has a broad range of support from labor, civil liberties groups and a number of business associations. I again commend Senators KENNEDY and HATCH. I enthusiastically support the Polygraph Protection Act of 1987 and I urge all my colleagues to support it.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. Mr. President, I am prepared to yield back the remainder of my time.

The PRESIDING OFFICER. The Senator from Massachusetts yield back the remainder of his time.

All time has expired or been yielded back.

The question is on adoption of the committee substitute as amended.

Mr. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, I ask unanimous consent to proceed for 2 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, the rollcall vote is imminent and the order was entered last evening making the call for the regular order automatic at the conclusion of 15 minutes. Therefore, I would suggest that Senators be on their way to the floor now as soon as possible.

Mr. President, I take a minute just to compliment and thank the two managers of the bill, Senator KENNEDY and Senator HATCH. They have demonstrated good teamwork on this bill, good cooperation and skill in managing the bill, handling it in committee and in bringing it to final conclusion shortly. They are to be commended.

I especially, though, commend Mr. KENNEDY. He has been in considerable physical pain during this debate, yet has not asked for any special consideration. He did not ask to end the debate last night. He, as a matter of fact, was wanting to press on all the time. And so I admire him for that extra effort that he has put forth over and above the common effort that is ordinarily needed in his position as manager of the bill.

Mr. President, I yield the floor.

Mr. HATCH. Mr. President, I thank the distinguished majority leader and my colleague for his remarks.

Mr. KENNEDY. Mr. President, I ask unanimous consent that I may proceed for 30 seconds.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KENNEDY. Mr. President, I want to also thank the majority leader. We know that there is a very full calendar and there is a great deal of business for this body, and we know that there were several who had some concerns with the legislation. It is always a challenge to the leadership to try to work these matters out. I am grateful to the leader. I know I speak for all the members of our committee and, hopefully, for those who will vote in support and even those who might express some opposition.

I thank the leader very much, as well as the Senator from Utah.

The PRESIDING OFFICER. The question is on agreeing to the committee substitute, as amended.

The committee substitute, as amended, was agreed to.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

Mr. KENNEDY. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 1212, Calendar Order No. 431, the House companion bill.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 1212) to prevent the denial of employment opportunities by prohibiting the use of lie detectors by employers involved in or affecting interstate commerce.

There being no objection, the Senate proceeded to consider the bill.

Mr. KENNEDY. Mr. President, I ask unanimous consent that all after the enacting clause be stricken and the text of S. 1904, as amended, be substituted for the House language.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KENNEDY. Mr. President, I ask unanimous consent that the vote ordered on final passage of the Senate bill be transferred to final passage of H.R. 1212.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. KENNEDY. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass? The yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Tennessee [Mr. GORE] and the Senator from Illinois [Mr. SIMON] are necessarily absent.

I also announce that the Senator from Delaware [Mr. BIDEN] is absent because of illness.

Mr. SIMPSON. I announce that the Senator from Kansas [Mr. DOLE] is necessarily absent.

The PRESIDING OFFICER (Mr. BREAUX). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 69, nays 27, as follows:

[Rollcall Vote No. 43 Leg.]

YEAS—69

Adams	Durenberger	Melcher
Baucus	Evans	Metzenbaum
Bentsen	Exon	Mikulski
Bingaman	Ford	Mitchell
Boren	Fowler	Moynihan
Boschwitz	Glenn	Nunn
Bradley	Harkin	Packwood
Breaux	Hatch	Pell
Bumpers	Hatfield	Proxmire
Burdick	Heflin	Pryor
Byrd	Heinz	Reid
Chafee	Hollings	Riegle
Chiles	Humphrey	Rockefeller
Cohen	Inouye	Sanford
Conrad	Johnston	Sarbanes
Cranston	Kasten	Sasser
D'Amato	Kennedy	Shelby
Danforth	Kerry	Simpson
Daschle	Lautenberg	Specter
DeConcini	Leahy	Stafford
Dixon	Levin	Stennis
Dodd	Lugar	Weicker
Domenici	Matsunaga	Wirth

NAYS—27

Armstrong	Karnes	Roth
Bond	Kassebaum	Rudman
Cochran	McCain	Stevens
Garn	McClure	Symms
Graham	McConnell	Thurmond
Gramm	Murkowski	Trible
Grassley	Nickles	Wallop
Hecht	Pressler	Warner
Helms	Quayle	Wilson

NOT VOTING—4

Biden	Gore
Dole	Simon

So the bill (H.R. 1212), as amended, was passed, as follows:

H.R. 1212

Resolved, That the bill from the House of Representatives (H.R. 1212) entitled "An Act to prevent the denial of employment opportunities by prohibiting the use of lie detectors by employers involved in or affecting interstate commerce," do pass with the following amendment:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Polygraph Protection Act of 1988".

SEC. 2. DEFINITIONS.

As used in this Act:

(1) COMMERCE.—The term "commerce" has the meaning provided by section 3(b) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(b)).

(2) EMPLOYER.—The term "employer" includes any person acting directly or indirectly in the interest of an employer in relation to an employee or prospective employee.

(3) LIE DETECTOR TEST.—The term "lie detector test" includes—

(A) any examination involving the use of any polygraph, deceptograph, voice stress analyzer, psychological stress evaluator, or any other similar device (whether mechanical, electrical, or chemical) that is used, or the results of which are used, for the purpose of rendering a diagnostic opinion regarding the honesty or dishonesty of an individual; and

(B) the testing phases described in paragraphs (1), (2), and (3) of section 8(c).

(4) POLYGRAPH.—The term "polygraph" means an instrument that records continuously, visually, permanently, and simultaneously changes in the cardiovascular, respiratory, and electrodermal patterns as minimum instrumentation standards.

(5) RELEVANT QUESTION.—The term "relevant question" means any lie detector test question that pertains directly to the matter under investigation with respect to which the examinee is being tested.

(6) SECRETARY.—The term "Secretary" means the Secretary of Labor.

(7) TECHNICAL QUESTION.—The term "technical question" means any control, symptomatic, or neutral question that, although not relevant, is designed to be used as a measure against which relevant responses may be measured.

SEC. 3. PROHIBITIONS ON LIE DETECTOR USE.

Except as provided in section 7, it shall be unlawful for any employer engaged in or affecting commerce or in the production of goods for commerce—

(1) directly or indirectly, to require, request, suggest, or cause any employee or prospective employee to take or submit to any lie detector test;

(2) to use, accept, refer to, or inquire concerning the results of any lie detector test of any employee or prospective employee;

(3) to discharge, dismiss, discipline in any manner, or deny employment or promotion to, or threaten to take any such action against—

(A) any employee or prospective employee who refuses, declines, or fails to take or submit to any lie detector test; or

(B) any employee or prospective employee on the basis of the results of any lie detector test; or

(4) to discharge, discipline, or in any manner discriminate against an employee or prospective employee because—

(A) such employee or prospective employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act;

(B) such employee or prospective employee has testified or is about to testify in any such proceeding; or

(C) of the exercise by such employee, on behalf of such employee or another person, of any right afforded by this Act.

SEC. 4. NOTICE OF PROTECTION.

The Secretary shall prepare, have printed, and distribute a notice setting forth excerpts from, or summaries of, the pertinent provisions of this Act. Each employer shall post and maintain such notice, in conspicuous places on its premises where notices to employees and applicants to employment are customarily posted.

SEC. 5. AUTHORITY OF THE SECRETARY.

(a) IN GENERAL.—The Secretary shall—

(1) issue such rules and regulations as may be necessary or appropriate to carry out this Act;

(2) cooperate with regional, State, local, and other agencies, and cooperate with and furnish technical assistance to employers, labor organizations, and employment agencies to aid in effectuating the purposes of this Act; and

(3) make investigations and inspections and require the keeping of records necessary or appropriate for the administration of this Act.

(b) SUBPOENA AUTHORITY.—For the purpose of any hearing or investigation under this Act, the Secretary shall have the authority contained in sections 9 and 10 of the Federal Trade Commission Act (15 U.S.C. 49 and 50).

SEC. 6. ENFORCEMENT PROVISIONS.

(a) CIVIL PENALTIES.—

(1) IN GENERAL.—Subject to paragraph (2), any employer who violates any provision of this Act may be assessed a civil penalty of not more than $10,000.

(2) DETERMINATION OF AMOUNT.—In determining the amount of any penalty under paragraph (1), the Secretary shall take into account the previous record of the person in terms of compliance with this Act and the gravity of the violation.

(3) COLLECTION.—Any civil penalty assessed under this subsection shall be collected in the same manner as is required by subsections (b) through (e) of section 503 of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1853) with respect to civil penalties assessed under subsection (a) of such section.

(b) INJUNCTIVE ACTIONS BY THE SECRETARY.—The Secretary may bring an action to restrain violations of this Act. The district courts of the United States shall have jurisdiction, for cause shown, to issue temporary or permanent restraining orders and injunctions to require compliance with this Act.

(c) PRIVATE CIVIL ACTIONS.—

(1) LIABILITY.—An employer who violates this Act shall be liable to the employee or prospective employee affected by such violation. Such employer shall be liable for such legal or equitable relief as may be appropriate, including but not limited to employment, reinstatement, promotion, and the payment of lost wages and benefits.

(2) COURT.—An action to recover the liability prescribed in paragraph (1) may be maintained against the employer in any Federal or State court of competent jurisdiction by any one or more employees for or in behalf of himself or themselves and other employees similarly situated.

(3) COSTS.—The court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.

(d) WAIVER OF RIGHTS PROHIBITED.—The rights and procedures provided by this Act may not be waived by contract or otherwise, unless such waiver is part of a written settlement of a pending action or complaint, agreed to and signed by all the parties.

SEC. 7. EXEMPTIONS.

(a) NO APPLICATION TO GOVERNMENTAL EMPLOYERS.—The provisions of this Act shall not apply with respect to the United States Government, a State or local government, or any political subdivision of a State or local government.

(b) NATIONAL DEFENSE AND SECURITY EXEMPTION.—

(1) NATIONAL DEFENSE.—Nothing in this Act shall be construed to prohibit the administration, in the performance of any counterintelligence function, of any lie detector test to—

(A) any expert or consultant under contract to the Department of Defense or any employee of any contractor of such Department; or

(B) any expert or consultant under contract with the Department of Energy in connection with the atomic energy defense activities of such Department or any employee of any contractor of such Department in connection with such activities.

(2) SECURITY.—Nothing in this Act shall be construed to prohibit the administration, in the performance of any intelligence or counterintelligence function, of any lie detector test to—

(A)(i) any individual employed by, or assigned or detailed to, the National Security Agency or the Central Intelligence Agency, (ii) any expert or consultant under contract to the National Security Agency or the Central Intelligence Agency, (iii) any employee of a contractor of the National Security Agency or the Central Intelligence Agency, or (iv) any individual applying for a position in the National Security Agency or the Central Intelligence Agency; or

(B) any individual assigned to a space where sensitive cryptologic information is produced, processed, or stored for the National Security Agency or the Central Intelligence Agency.

(c) EXEMPTION FOR FBI CONTRACTORS.—Nothing in this Act shall be construed to prohibit the administration, in the performance of any counterintelligence function, of any lie detector test to an employee of a contractor of the Federal Bureau of Investigation of the Department of Justice who is engaged in the performance of any work under the contract with such Bureau.

(d) LIMITED EXEMPTION FOR ONGOING INVESTIGATIONS.—Subject to section 8, this Act shall not prohibit an employer from requesting an employee to submit to a polygraph test if—

(1) the test is administered in connection with an ongoing investigation involving economic loss or injury to the employer's business, including theft, embezzlement, misappropriation, or an act of unlawful industrial espionage or sabotage;

(2) the employee had access to the property that is the subject of the investigation;

(3) the employer has a reasonable suspicion that the employee was involved in the incident or activity under investigation; and

(4) the employer—

(A) files a report of the incident or activity with the appropriate law enforcement agency;

(B) files a claim with respect to the incident or activity with the insurer of the employer, except that this subparagraph shall not apply to a self-insured employer;

(C) files a report of the incident or activity with the appropriate government regulatory agency; or

(D) executes a statement that—

(i) sets forth with particularity the specific incident or activity being investigated and the basis for testing particular employees;

(ii) is signed by a person (other than a polygraph examiner) authorized to legally bind the employer;

(iii) is provided to the employee on request;

(iv) is retained by the employer for at least 3 years; and

(v) contains at a minimum—

(I) an identification of the specific economic loss or injury to the business of the employer;

(II) a statement indicating that the employee had access to the property that is the subject of the investigation; and

(III) a statement describing the basis of the employer's reasonable suspicion that the employee was involved in the incident or activity under investigation.

(e) EXEMPTION FOR SECURITY SERVICES.—

(1) IN GENERAL.—Subject to paragraph (3), this Act shall not prohibit the use of a lie detector test on prospective employees of a private employer whose primary business purpose consists of providing armored car personnel, personnel engaged in the design, installation, and maintence of security alarm systems, or other uniformed or plainclothes security personnel and whose function includes protection of—

(A) facilities, materials, or operations having a significant impact on the health or safety of any State or political subdivision thereof, or the national security of the United States, as determined under rules and regulations issued by the Secretary within 60 days after the date of the enactment of this Act, including—

(i) facilities engaged in the production, transmission, or distribution of electric or nuclear power;

(ii) public water supply facilities;

(iii) shipments or storage of radioactive or other toxic waste materials; and

(iv) public transportation; or

(B) currency, negotiable securities, precious commodities or instruments, or proprietary information.

(2) COMPLIANCE.—The exemption provided under paragraph (1) shall not diminish an employer's obligation to comply with—

(A) applicable State and local law; and

(B) any negotiated, collective bargaining agreement,

that limits or prohibits the use of lie detector tests on such prospective employees.

(3) APPLICATION.—The exemption provided under this subsection shall not apply if—

(A) the results of an analysis of lie detector charts are used as the basis on which a prospective employee is denied employment without additional supporting evidence; or

(B) the test is administered to a prospective employee who is not or would not be employed to protect facilities, materials, operations, or assets referred to in paragraph (1).

(f) NUCLEAR POWER PLANT EXEMPTION.—This Act shall not prohibit the use of a lie detector test by an employer on any employee or prospective employee of any nuclear power plant. This subsection shall not preempt or supersede any state or local law that prohibits or restricts the use of lie detector tests.

(g) Nothing in this Act shall be construed to preclude the use of a lie detector test to any expert or consultant or any employee of such expert or consultant under contract with any Federal Government department, agency, or program where a security clearance is required by the Federal Government for such expert or consultant and such expert or consultant, as a result of the contract, has access to classified and sensitive Government information.

SEC. 8. RESTRICTIONS ON USE OF EXEMPTIONS.

(a) OBLIGATION TO COMPLY WITH CERTAIN LAWS AND AGREEMENTS.—The exemptions provided under subsections (d) and (e) of section 7 shall not diminish an employer's obligation to comply with—

(1) applicable State and local law; and

(2) any negotiated collective bargaining agreement,

that limits or prohibits the use of lie detector tests on employees.

(b) TEST AS BASIS FOR ADVERSE EMPLOYMENT ACTION.—Such exemption shall not apply if an employee is discharged, dismissed, disciplined, or discriminated against in any manner on the basis of the analysis of one or more polygraph tests or the refusal to take a polygraph test, without additional supporting evidence. The evidence required by section 7(d) may serve as additional supporting evidence.

(c) RIGHTS OF EXAMINEE.—Such exemption shall not apply unless the requirements described in section 7 and paragraphs (1), (2), and (3) are met.

(1) PRETEST PHASE.—During the pretest phase, the prospective examinee—

(A) is provided with reasonable notice of the date, time, and location of the test, and of such examinee's right to obtain and consult with legal counsel or an employee representative before each phase of the test;

(B) is not subjected to harassing interrogation technique;

(C) is informed of the nature and characteristics of the tests and of the instruments involved;

(D) is informed—

(i) whether the testing area contains a two-way mirror, a camera, or any other device through which the test can be observed;

(ii) whether any other device, including any device for recording or monitoring the conversation will be used; or

(iii) that the employer and the examinee, may with mutual knowledge, make a recording of the entire proceeding;

(E) is read and signs a written notice informing such examinee—

(i) that the examinee cannot be required to take the test as a condition of employment;

(ii) that any statement made during the test may constitute additional supporting evidence for the purposes of an adverse employment action described in section 8(b);

(iii) of the limitations imposed under this section;

(iv) of the legal rights and remedies available to the examinee if the polygraph test is not conducted in accordance with this Act; and

(v) of the legal rights and remedies of the employer; and

(F) is provided an opportunity to review all questions (technical or relevant) to be asked during the test and is informed of the right to terminate the test at any time; and

(G) signs a notice informing such examinee of—

(i) the limitations imposed under this section;

(ii) the legal rights and remedies available to the examinee if the polygraph test is not conducted in accordance with this Act; and

(iii) the legal rights and remedies of the employer.

(2) ACTUAL TESTING PHASE.—During the actual testing phase—

(A) the examinee is not asked any questions by the examiner concerning—

(i) religious beliefs or affiliations;

(ii) beliefs or opinions regarding racial matters;

(iii) political beliefs or affiliations;

(iv) any matter relating to sexual behavior; and

(v) beliefs, affiliations, or opinions regarding unions or labor organizations;

(B) the examinee is permitted to terminate the test at any time;

(C) the examiner does not ask such examinee any question (technical or relevant) during the test that was not presented in writing for review to such examinee before the test;

(D) the examiner does not ask technical questions of the examinee in a manner that is designed to degrade, or needlessly intrude on, the examinee;

(E) the examiner does not conduct a test on an examinee when there is written evidence by a physician that the examinee is suffering from a medical or psychological condition or undergoing treatment that might cause abnormal responses during the test; and

(F) the examiner does not conduct and complete more than five polygraph tests on a calendar day on which the test is given, and does not conduct any such test for less than a 90-minute duration.

(3) POST-TEST PHASE.—Before any adverse employment action, the employer must—

(A) further interview the examinee on the basis of the results of the test; and

(B) provide the examinee with—

(i) a written copy of any opinion or conclusion rendered as a result of the test; and

(ii) a copy of the questions asked during the test along with the corresponding charted responses.

(d) QUALIFICATIONS OF EXAMINER.—The exemptions provided under subsections (d) and (e) of section 7 shall not apply unless the individual who conducts the polygraph test—

(1) is at least 21 years of age;

(2) has complied with all required laws and regulations established by licensing and regulatory authorities in the State in which the test is to be conducted;

(3)(A) has successfully completed a formal training course regarding the use of polygraph tests that has been approved by the State in which the test is to be conducted or by the Secretary; and

(B) has completed a polygraph test internship of not less than 6 months duration under the direct supervision of an examiner who has met the requirements of this section;

(4) maintains a minimum of a $50,000 bond or an equivalent amount of professional liability coverage;

(5) uses an instrument that records continuously, visually, permanently, and simultaneously changes in the cardiovascular, respiratory, and electrodermal patterns as minimum instrumentation standards;

(6) bases an opinion of deception indicated on evaluation of changes in physiological activity or reactivity in the cardiovascular, respiratory, and electrodermal patterns on the lie detector charts;

(7) renders any opinion or conclusion regarding the test—

(A) in writing and solely on the basis of an analysis of the polygraph charts;

(B) that does not contain information other than admissions, information, case facts, and interpretation of the charts relevant to the purpose and stated objectives of the test; and

(C) that does not include any recommendation concerning the employment of the examinee; and

(8) maintains all opinions, reports, charts, written questions, lists, and other records relating to the test for a minimum period of 3 years after administration of the test.

(e) PROMULGATION OF STANDARDS.—The Secretary shall establish standards governing individuals who, as of the date of the enactment of this Act, are qualified to conduct polygraph tests in accordance with applicable State law. Such standards shall not be satisfied merely because an individual has conducted a specific number of polygraph tests previously.

SEC. 9. DISCLOSURE OF INFORMATION.

(a) IN GENERAL.—A person, other than the examinee, may not disclose information obtained during a polygraph test, except as provided in this section.

(b) PERMITTED DISCLOSURES.—A polygraph examiner, polygraph trainee, or employee of

a polygraph examiner may disclose information acquired from a polygraph test only to—

(1) the examinee or any other person specifically designated in writing by the examinee;

(2) the employer that requested the test;

(3) any person or governmental agency that requested the test as authorized under subsection (a), (b), or (c) of section 7; or

(4) any court, governmental agency, arbitrator, or mediator, in accordance with due process of law, pursuant to an order from a court of competent jurisdiction.

(c) DISCLOSURE BY EMPLOYER.—An employer (other than an employer covered under subsection (a), (b), or (c) of section 7) for whom a polygraph test is conducted may disclose information from the test only to a person described in subsection (b).

SEC. 10. EFFECT ON OTHER LAW AND AGREEMENTS.

This Act shall not preempt any provision of any State or local law, or any negotiated collective bargaining agreement, that is more restrictive with respect to the administration of lie detector tests than this Act.

SEC. 11. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in subsection (b), this Act shall become effective 6 months after the date of enactment of this Act.

(b) REGULATIONS.—Not later than 120 days after the date of enactment of this Act, the Secretary shall issue such rules and regulations as may be necessary or appropriate to carry out this Act.

SEC. 11. EXEMPTION FOR PREEMPLOYMENT TESTS FOR USE OF CONTROLLED SUBSTANCES.

(a) IN GENERAL.—An employer, subject to section 7, may administer a scientifically valid test other than a lie detector test to a prospective employee to determine the extent to which the prospective employee has used a controlled substance listed in schedule I, II, III, or IV pusuant to section 202 of the Controlled Substances Act (21 U.S.C. 812).

(b) EXCEPTIONS.—

(1) ACCURACY AND CONFIDENTIALITY.—Paragraph (1) shall not supersede any provision of this Act or Federal or State law that prescribes standards for ensuring the accuracy of the testing process or the confidentiality of the test results.

(2) COLLECTIVE BARGAINING AGREEMENTS.—If prospective employees would be subject to a negotiated collective bargaining agreement, paragraph (1) shall apply only if testing is conducted in accordance with such agreement.

SEC. 12. MEXICO STEEL LOAN.

The Senate finds—

(1) during the past decade the United States steel industry has witnessed significant economic disruption and employment losses due to increased foreign competition;

(2) the United States steel industry has lost more than $12,000,000,000, more than half its workforce, and closed scores of plants throughout the country;

(3) in order to regain its competitive posture, the United States industry has invested more than 8 billion dollars on modernization, obtained painful wage concessions from its remaining workforce, and slashed production capacity by one-third;

(4) there are more than 200,000,000 excess tons of steel capacity worldwide, causing severe financial strains on steel industries in many countries;

(5) the proposed loan by the International Bank for Reconstruction and Development (hereafter referred to as the "World Bank") would provide Mexico's steel companies with subsidized financing to further the glut of worldwide steel production;

(6) the proposed loan could do irreparable damage to the United States steel industry, therefore, it is the sense of the Senate that the proposed loan is not in the best interests of the United States or in the best interests of Mexico's own economic revitalization; and the World Bank should reject the proposed loan.

SEC. 13. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in subsection (b), this Act shall become effective 6 months after the date of enactment of this Act.

(b) REGULATIONS.—Not later than 120 days after the date of enactment of this Act, the Secretary shall issue such rules and regulations as may be necessary or appropriate to carry out this Act.

Mr. KENNEDY. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. HATCH. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HATCH. Mr. President, I just want to say a few words about the staff who worked so hard to help us pass this legislation. Tom Rollins and Jay Harvey on Senator KENNEDY'S staff and Kevin McGuiness on my own staff all did an excellent job of putting together this compromise. I also want to thank Deanna Godfrey, Jeannette Carlile and Angela Pope on my Labor Committee staff who are so critical to my efforts on the floor. All have spent hours on this legislation and other issues, and their efforts often go unacknowledged. I hope they know how much their work is appreciated.

Finally, I would like to express my gratitude to Mike Tiner, who has lived and breathed this issue for 3 years. His efforts were key to our success.

Mr. HATFIELD. Mr. President, I ask unanimous consent to be able to proceed out of order on very important remarks for my State for 5 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

OREGON TIMBER SALE APPEALS

Mr. HATFIELD. Mr. President, I would like to take a few minutes of the Senate's time to discuss a very serious situation that has developed in my home State over the last few days.

Beginning last Wednesday, a very small segment of the environmental community in Oregon filed appeals on 36 timber sales being reoffered for sale on the Siskiyou National Forest under the provisions of the Federal Timber Contract Payment Modification Act of 1984. Then, on the first 3 days of this week, the same group filed 189 more appeals on three more national forests in Oregon: 80 appeals on the Siuslaw National Forest, 41 appeals on the Umpqua National Forest, and 68 appeals on the Willamette National Forest. These 225 appeals are more than were filed on all timber sales in both Oregon and Washington during the last 3 years combined.

They were filed in spite of the fact that most of these reoffered sales were modified to improve them under the most current environmental standards. They were filed despite the knowledge that most or all of the timber sale programs of each of the national forests involved would be delayed or completely halted, which would result in serious economic disruption through unemployment and lost Federal forest and tax receipts to local governments.

These appeals were filed despite clear evidence that it is the forest products industry that is among the leaders in Oregon's effort to move out of the economic recession that has burdened the State for nearly a decade. And of no apparent concern to the fringe. And I emphasize this, did not represent the mainstream of environmental organizations. But a fringe environmental group precipitating this tidal wave of potential litigation, as many as 9,000 jobs hang in the balance.

And therein lies our dilemma, Mr. President. It is the continued unwillingness of one environmental faction to accept the lawful decisions of the Congress regarding the management of our public lands by awaiting the final forest plans, which leads us to these appeals. In their haste, and in pushing frivolous appeals by using word processors and simply inserting the name of a timber sale, these actions constitute an end-run around a consensus process crafted through compromises made by all sides.

My major concern is that this action is a polarizing affront to the consensus-building, earnest discussion-process which has been the hallmark of Oregon natural resource legislation. These appeals constitute a collapse in trust, a reckless provocation that actually could serve to harm the environmental values they purport to protect.

I am confident that the public will see this action for what it is and reject it so that there can continue to be a consensus approach to timber management and environmental protection issues.

Mr. President, the bottom line is simply this: you cannot call yourself an environmentalist and at the same time support this type of irresponsible behavior. We environmentalists recognize that the very essence of the word is responsible stewardship of the Earth's natural resources. We debate how many jobs must be maintained. We debate what must be protected at all costs and what should be subject to compromise. We debate amongst ourselves as to the proper balance of development and preservation. And though these in-house disagreements occur frequently—and sometimes quite emotionally—the debate remains within the parameters of common sense. Some of these people have crossed that threshold more times than I can count, but today they have exhausted the last ounce of reasonableness. The challenge to every person in my State who thinks of himself or herself as a true environmental-

ist is to let these people know that their masquerade party is over. We cannot allow them to exploit Oregon's reputation as reasonable people with a passionate love of the Earth. Let us call it like it is: these people are not environmentalists. They seek to set back the clock of environmental progress leaving behind the wreckage of people out of work and communities in collapse. Such action tears down the well-earned reputation of the Oregon environmentalist community.

Mr. President, those of my colleagues with whom I have worked on national forest issues over the years, know that I have definite views about the importance of national forest management to my State, indeed, to the entire Pacific Northwest. I have long believed that predictable multiple use forestry, implemented by using the best sustained-yield silvicultural methods available, results in vital environmental protection and contributes to economic stability in our timer-dependent communities. This is especially important considering that almost 60 percent of the forest products industry in Oregon is dependent upon public timber for its supply of raw material.

But let me remind my colleagues that the sale of public timber from our national forests did not begin until after World War II. Until that time, all of the forest products required by users in the United States and around the world came from those same private landowners who are now so reviled.

It should note construed from these comments that I support the unsustainable harvesting of timber. My record in this body establishes clearly my strong support for sustained-yield public forestry, as well as support for research that will lead to even greater yields from an increasingly narrower land base.

Over the years I have supported these principles in the face of increasing assaults on balanced national forest management in my region by pseudo-environmentalists who do not speak for mainstream environmental concerns.

In 1969, Congress passed the National Environmental Policy Act [NEPA], which established the process by which environmental impact statements were to be prepared. Through this process, the Federal Government would be required to analyze fully the potential effects of all its actions on our natural resources. I can recall Senator Scoop Jackson offering the prediction that these EIS's would be documents about a page long by which the public could easily determine alternative options for proposed actions. Today, in fact, these EIS's frequently run more than thousands of pages in length and are even heavier than those famous continuing resolutions about which the President is so fond of railing against the Congress.

In our efforts to improve national forest management, we enacted the National Forest Management Act [NFMA] in 1976, in response, I might add, to an environmental lawsuit. NFMA went a step beyond the 1960 Multiple Use Sustained Yield Act by setting forth specific management criteria for such resource values as wildlife, watershed, timber, and recreation in a comprehensive national forest planning process. Oregon and Washington are developing new management plans using these new guidelines. The plans are late, and there is much debate and discussion over their content, but they are proceeding ahead.

But for some, waiting is difficult. Some do not accept the process by which we manage our vast resources. And I am not referring to the Sierra Club, the Friends of the Columbia Gorge, the Wilderness Society, the Oregon Rivers Council, the National Wildlife Federation, the Audubon Society, and other groups with which I have worked—and I add that they disagree with me often and vigorously, but they are reasonable about it and never abuse the process in the manner we are now witnessing.

In fact, much of the last two decades has been spent working with these organizations to shape natural resource policy. These fruitful efforts in Oregon were embodied in the two Roadless Area Review and Evaluation studies [RARE I and RARE II], a wilderness-bill-a-year for 20 years, and various other natural resource debates.

During my years in this body I have had the pleasure of drafting and/or assisting in the passage of several pieces of resource legislation relating to Oregon. These efforts include the Oregon Dunes National Recreation Area, the Hells Canyon National Recreation Area, the Yaquina Head Recreation and Research Area, the Cascade Head National Research Area, all four of Oregon's Wild and Scenic Rivers, additions to Crater Lake National Park, the prohibition of mining in Crater Lake National Park, the buyout of mining claims in the Three Sisters Wilderness, the John Day Fossil Beds National Monument, the Columbia River Gorge National Scenic Area, the quadrupling of Oregon's Federal wilderness, and I will soon introduce a major Wild and Scenic Rivers bill for my home State.

The environmental process that has been established through this record of coalition and consensus-building is now being abused through frivolous appeals and lawsuits, and the predictable resource allocation that provides community stability for scores of timber-dependent economies is constantly jeopardized.

But in this instance, Mr. President, the interests of the majority are being subjugated to those of a fringe minority. In this instance, a system I still regard as workable and viable is being misused in a way that has nothing to do with merit or substance. Most challenges to these timber sales have failed on their merits. And having failed on the merits, the challenges are now being directed at an already overburdened agency on procedural grounds. One could quickly draw the conclusion that these appeals have been offered to delay, distract, and harass. Sincere attempts to improve forest management are one thing, but sabotage of the process is another.

I have labored for many years to ensure that the legitimate claims of concerned environmentalists are heard and acted upon. During a 1985 crisis involving the Mapleton Ranger District of the Siuslaw National Forest, Congress authorized the substitution of reoffered timber sales for new green sales which were halted because of a court injunction. The purpose of this action was to ensure a smooth flow of raw material to timber-dependent communities while still ensuring that legitimate environmental concerns about new sales on lands without EIS's were protected.

In 1986, in response to yet another challenge to timber sales—this time on the BLM's Medford District—Congress again provided for the agency to move reoffered sales forward while protecting the appeal rights of concerned environmentalists.

The theme has been consistent: the protection and balancing of competing legitimate interests in environmental disputes.

I must admit that I cannot understand the motive for this latest attack on western Oregon's timber sale program. If the Forest Service or the Congress had pushed through the irrational harvesting of public timber on lands that had not been subjected to close planning, I might understand. But this is not the case. Over half of the sales being reoffered for sale under the 1984 Timber Contract Payment Modification Act have been modified for environmental considerations. That has been done in spite of the fact that the land base remains narrower than it should be because lands released for multiple use management under the 1984 Omnibus Oregon Wilderness Act have not yet been put into appropriate production. The new forest plans, once implemented in final form, will establish the appropriate land allocations for those released lands.

Mr. President, this brief recounting of natural resource policy in Oregon over the last 20 years illustrates that cooperation and reason are the two crucial elements for the successful resolution of difficult public land conflicts. Accordingly, I encourage those interested in resource protection issues to choose this proven path which leads to fairness, equity, and wise management, and to reject those irresponsible methods which lack respect and civility for the process so many have worked so long to create.